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Separate paging is given to this Part in order that it may be filed as a separate compilation.

## PART V.

Bills introduced in the Council of State and Legislative Assembly, Reports of Select Committees presented to the Council and Assembly and Bills published under Rule 18 of the Indian Legislative Rules.

GOVERNMENT OF INDIA.

### LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 16th January, 1922 :—

#### No. 1 OF 1922.

*A Bill to establish and incorporate a unitary teaching and residential University at Delhi.*

WHEREAS it is expedient to establish and incorporate a unitary teaching and residential University at Delhi; It is hereby enacted as follows :—

1. (1) This Act may be called the Delhi Short title and com- University Act, 1922.  
mencement.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, direct.

2. In this Act, and in the Statutes, unless Definitions. there is anything repugnant in the subject or context,—

(a) "College" means an institution maintained or recognized by the University in accordance with the provisions of this Act, in which instruction is provided under conditions prescribed in the Statutes, and in which provision is made for residence of students of the University;

- (b) "Hall" means a unit of residence for students of the University maintained or recognized by the University in accordance with the provisions of this Act;
- (c) "Principal" means the head of a College;
- (d) "registered graduates" means graduates registered under the provisions of this Act;
- (e) "Statutes", "Ordinances" and "Regulations" mean, respectively, the Statutes, Ordinances and Regulations of the University made under this Act;
- (f) "teachers" includes Professors, Readers, Lecturers and other persons imparting instruction in the University or in any College or Hall;
- (g) "teachers of the University" means persons appointed under this Act for the purpose of imparting instruction in the University;
- (h) "University" means the University of Delhi; and
- (i) "Warden" means the head of a Hall.

*The University.*

3. (1) The first Chancellor and the first Vice-Chancellor of the University and the first members of the Court, the Executive Council and the Academic Council and all persons who may hereafter become such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of "the University of Delhi."

(2) The University shall have perpetual succession and a Common Seal, and shall sue and be sued by the said name.

4. The University shall have the following

Powers of the University. powers, namely:—

(1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge,

(2) to hold examinations and to grant to, and confer degrees and other academic distinctions on, persons who—

(a) have pursued a course of study in the University, or

(b) are teachers in educational institutions, under conditions laid down in the Ordinances and Regulations, and have passed the examinations of the University under like conditions,

(3) to confer honorary degrees or other distinctions on approved persons in the manner laid down in the Statutes,

(4) to grant such diplomas to, and to provide such lectures and instruction for, persons not being members of the University, as the University may determine,

(5) to co-operate with other Universities and authorities in such manner and for such purposes as the University may determine,

(6) to institute Professorships, Readerships, Lectureships and any other teaching posts required by the University, and to appoint persons to such Professorships, Readerships, Lectureships and posts,

(7) to institute and award Fellowships, Scholarships, Exhibitions and Prizes in accordance with the Statutes and the Regulations,

(8) to maintain Colleges and Halls, to recognize Colleges and Halls not maintained by the University, and to withdraw such recognition,

(9) to demand and receive payment of such fees and other charges as may be authorised by the Ordinances,

(10) to supervise and control the residence and discipline of students of the University, and to make arrangements for promoting their health and general welfare, and

(11) to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University as a teaching and examining body, and to cultivate and promote arts, science and other branches of learning.

5. (1) Save as otherwise provided in this Act, Territorial exercise the powers of the University conferred by or under this Act shall not extend beyond a radius of ten miles from the Convocation Hall

of the University, and, notwithstanding anything in any other law for the time being in force, no educational institution beyond that limit shall be associated with or admitted to any privileges of the University:

Provided that nothing in this sub-section shall apply to any agricultural or other technical institution established or maintained in connection with the University with the sanction of the Governor General in Council

(2) Notwithstanding anything in any other law for the time being in force, no educational institution within the afore-mentioned limit shall be associated in any way with or be admitted to any privileges of any other University incorporated by law in British India, and any such privileges granted by any such other University to any educational institution within that limit prior to the commencement of this Act shall be deemed to be withdrawn on the commencement of this Act:

Provided that the Governor General in Council may, by order in writing, direct that the provisions of this sub-section shall not apply in the case of any institution specified in the order.

6. The University shall be open to all persons

University open to of either sex and of what-all classes, castes and ever race, creed or class, creeds.

and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted thereto as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except where such test is specially prescribed by the Statutes, or, in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction.

Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those not unwilling to receive it by persons (whether teachers of the University or not) approved for that purpose by the Executive Council.

7. (1) All recognized teaching in connection Teaching of the Uni- with the University courses versity. shall be conducted under

the control of the Academic Council by teachers of the University, and shall include lecturing, laboratory work and other teaching conducted in the University by the Professors, Readers, Lecturers and other teachers thereof in accordance with any syllabus prescribed by the Regulations.

(2) Every teacher of the University shall be attached to a College, and at least one such teacher shall be attached to each College.

(3) The authorities responsible for organizing such teaching shall be prescribed by the Statutes.

(4) The courses and curricula shall be prescribed by the Ordinances and, subject thereto, by the Regulations.

(5) In addition to recognized teaching, tutorial and other instruction shall be given under the control of the University in each College.

(6) It shall not be lawful for the University to frame or conduct courses, maintain classes or conduct examinations for the purpose of preparing or testing students for admission to the University.

*Officers of the University.*

8. The following shall be the officers of the Officers of the University :—  
University.

- (I) The Chancellor,
- (II) the Vice-Chancellor,
- (III) the Treasurer,
- (IV) the Registrar,
- (V) the Principals,
- (VI) the Deans of the Faculties, and
- (VII) such other officers as may be declared by the Statutes to be officers of the University.

9. (1) The Chancellor shall be the Governor General. He shall by virtue of his office be the head of the University and the President of the Court, and shall when present, preside at meetings of the Court and at any Convocation of the University.

(2) The Chancellor shall have the right to cause an inspection to be made, by such person or persons as he may direct, of the University, its buildings, laboratories, equipment, and of any institutions associated with the University, and also of the examinations, teaching and other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University. The Chancellor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to be represented thereat.

(3) The Chancellor may address the Vice-Chancellor with reference to the results of such inspection or inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views of the Chancellor and shall, after ascertaining, if he so thinks fit, the opinion of the Executive Council thereon, advise the University upon the action to be taken thereon.

(4) The Executive Council shall report to the Vice-Chancellor for communication to the Chancellor such action, if any, as it is proposed to take or has been taken upon the results of such inspection or inquiry.

(5) Where the Executive Council does not, within a reasonable time, take action to the satisfaction of the Chancellor, the Chancellor may, after considering any explanation furnished or representation made by the Executive Council, issue such directions as he may think fit, and the Executive Council shall comply with such directions.

(6) The Chancellor shall have such other powers as may be conferred on him by this Act or the Statutes.

(7) Every proposal for the conferment of an honorary degree shall be subject to the confirmation of the Chancellor.

10. (1) The Vice-Chancellor shall be appointed by the Chancellor after consideration of the recommendations of the Executive Council, and shall hold office for such term and subject to such conditions as may be prescribed by the Statutes.

(2) Where any temporary vacancy in the office of the Vice-Chancellor occurs by reason of leave, illness or other cause, the Executive Council shall forthwith report the same to the Chancellor, who shall make such arrangements for carrying on the office of the Vice-Chancellor as he may think fit.

11. (1) The Vice-Chancellor shall be the principal executive and academic officer of the University, and shall, in the absence of the Chancellor, preside at meetings of the Court and at any Convocation of the University. He shall be an *ex-officio* member and Chairman of the Executive Council and of the Academic Council, and shall be entitled to be present and to speak at any meeting of any authority or other body of the University, but shall not be entitled to vote thereat, unless he is a member of the authority or body concerned.

(2) It shall be the duty of the Vice-Chancellor to see that this Act, the Statutes and the Ordinances are faithfully observed, and he shall have all powers necessary for this purpose.

(3) The Vice-Chancellor shall have power to convene meetings of the Court, the Executive Council and the Academic Council.

(4) (a) In any emergency which, in the opinion of the Vice-Chancellor, requires that immediate action should be taken, the Vice-Chancellor shall take such action as he deems necessary, and shall, at the earliest opportunity thereafter, report his action to the officer, authority or other body who or which in the ordinary course would have dealt with the matter.

(b) When action taken by the Vice-Chancellor under clause (a) affects any person in the service of the University, such person shall be entitled to prefer an appeal to the said officer, authority or other body within fifteen days from the date on which such action is communicated to him.

(5) The Vice-Chancellor shall give effect to the orders of the Executive Council regarding the appointment, dismissal and suspension of the officers and teachers of the University, and shall exercise general control over the members of the University. He shall be responsible for the discipline of the University in accordance with this Act, the Statutes and the Ordinances.

(6) The Vice-Chancellor shall exercise such other powers as may be prescribed by the Statutes and the Ordinances.

12. The Treasurer shall be appointed by the Chancellor after consideration of the recommendations of the Executive Council, upon such conditions and for such period, and shall receive such remuneration (if any) as the Executive Council shall deem fit. He shall be an *ex-officio* member of the Executive Council and shall—

- (1) exercise general supervision over the funds of the University, and advise in regard to its financial policy ;
- (2) subject to the control of the Executive Council, manage the property and investments of the University, and be responsible for the presentation of the annual estimates and statements of accounts ;
- (3) subject to the powers of the Executive Council, be responsible for seeing that

all monies are expended on the purpose for which they are granted or allotted ;

(4) sign all contracts made on behalf of the University ; and

(5) exercise such other powers as may be prescribed by the Statutes and the Ordinances :

Provided that the Chancellor may, on the recommendation of the Executive Council, in the case of any vacancy in the office of the Treasurer, whether permanent or otherwise, direct that the Registrar shall act as the Treasurer and perform all the duties and exercise all the powers of the Treasurer, and when any such direction has been made references to the Treasurer in this Act and the Statutes, Ordinances and Regulations shall be references to the Registrar.

**13.** The Registrar shall act as Secretary of the Court and the Executive Council. He shall maintain the registers of registered graduates in accordance with the Statutes, and shall exercise such other powers as may be prescribed by the Statutes and the Ordinances.

**14.** The powers of officers of the University other than the Chancellor, the Vice-Chancellor, the Treasurer and the Registrar shall be prescribed by the Statutes and the Ordinances.

#### *Authorities of the University.*

**15.** The following shall be the authorities of the University :—

- (I) The Court,
- (II) the Executive Council,
- (III) the Academic Council,
- (IV) the Faculties, and
- (V) such other authorities as may be declared by the Statutes to be authorities of the University.

**16.** (1) The Court shall consist of the following persons, namely :—  
The Court.

#### *Class I.—Ex-officio members.*

- (i) The Chancellor,
- (ii) the Vice-Chancellor,
- (iii) the Treasurer,
- (iv) the Registrar,
- (v) the Principals,
- (vi) the Professors and Readers of the University, and
- (vii) such other *ex-officio* members as may be prescribed by the Statutes.

#### *Class II.—Life members.*

- (viii) Persons (if any) appointed by the Chancellor to be life members on the ground that they have rendered great services to education or have made substantial donations to the University.

#### *Class III.—Other members.*

- (ix) Graduates of the University elected by the registered graduates from among their own body,

(x) persons elected from among their own body by the teachers other than Professors and Readers of the University,

(xi) persons elected by associations or other bodies approved in this behalf by the Chancellor on the recommendation of the Executive Council,

(xii) persons elected by the elected members of the Council of State and the Legislative Assembly from among their own numbers,

(xiii) persons appointed by the Chancellor,

(xiv) persons appointed by the Chief Commissioner of Delhi whose number shall be determined by the Chancellor,

(xv) a representative of the Governing Body of each College, elected or nominated by that Body.

(2) The number of members to be elected or appointed under clauses (ix), (x), (xi), (xii) and (xiii), and the tenure of office of members to be elected or appointed under each clause of Class III shall be prescribed by the Statutes, and the mode of election of members to be elected under clauses (ix) and (x) shall be prescribed by the Ordinances.

**17.** (1) The Court shall, on a date to be fixed by the Vice-Chancellor, meet once a year at a meeting to be called the annual meeting of the Court.

(2) The Vice-Chancellor may, whenever he thinks fit, and shall, upon a requisition in writing signed by not less than thirty members of the Court, convene a special meeting of the Court.

**18.** Subject to the provisions of this Act, the Court shall exercise the Powers and duties of the Court, and perform the following powers and perform the following duties, namely :—

- (a) of making Statutes, and of amending or repealing the same,
- (b) of considering and cancelling Ordinances, and
- (c) of considering and passing resolutions on the annual report, the annual accounts and the financial estimates,

and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes.

**19.** The Executive Council shall be the executive body of the University, and its constitution and the terms of office of its members, other than *ex-officio* members, shall be prescribed by the Statutes.

**20.** The Executive Council—

Powers and duties of the Executive Council.

- (a) shall hold, control and administer the property and funds of the University, and for these purposes shall appoint a Finance Committee to advise it on matters of finance. The Treasurer shall be the Chairman of the Committee, and the remaining members shall be appointed from among the members of the Executive Council, provided that at least one member of the Committee shall be a member elected to the Executive Council by the Court ;

- (b) shall determine the form, provide for the custody and regulate the use of the Common Seal of the University;
- (c) shall, subject to the powers conferred by this Act on the Vice-Chancellor, regulate and determine all matters concerning the University in accordance with this Act, the Statutes and the Ordinances:

provided that no action shall be taken by the Executive Council in respect of the appointment or emoluments of examiners, or the number, qualifications or emoluments of teachers otherwise than on a recommendation of the Academic Council;

- (d) shall lay before the Governor General in Council annually a full statement of all the requests received by it for financial assistance from any institution associated with the University, together with its own views thereon;
- (e) shall administer any funds placed at the disposal of the University for specific purposes;
- (f) subject to the provisions of this Act and the Statutes, shall appoint the officers (other than the Chancellor, the Vice-Chancellor and the Treasurer), teachers, clerical staff and servants of the University, and shall define their duties and the conditions of their service, and shall provide for the filling of temporary vacancies in their posts;
- (g) shall have power to accept on behalf of the University transfers of any moveable or immovable property;
- (h) shall publish the results of the University examinations;
- (i) shall exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes; and
- (j) shall exercise all other powers of the University not otherwise provided for by this Act or the Statutes.

**21.** The Academic Council shall be the academic body of the University, and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance, of standards of instruction, education and examination within the University, and shall exercise such other powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matters. The constitution of the Academic Council and the term of office of its members, other than *ex-officio* members, shall be prescribed by the Statutes.

**22.** (1) The University shall include the Faculties of Arts, Science, Medicine and Commerce, and such other Faculties (whether formed by the sub-division or combination of an existing Faculty or Faculties, or by the creation of a new Faculty or otherwise) as may be prescribed by the Statutes. Each Faculty shall, subject to the control of the Academic Council, have charge of the teaching

and the courses of study and the research work in such subjects as may be assigned to such Faculty by the Ordinances.

(2) The constitution and powers of the Faculties shall be prescribed by the Statutes.

(3) There shall be a Dean of each Faculty, who shall be responsible for the due observance of the Statutes, Ordinances and Regulations relating to the Faculty.

(4) Each Faculty shall comprise such Departments of teaching as may be prescribed by the Ordinances. The head of every such Department shall be the Professor of the Department or, if there is no Professor, the Reader. If there is more than one Professor or more than one Reader of a Department, the Vice-Chancellor shall appoint to be head of the Department such one of the Professors or, if there is no Professor, such one of the Readers as he thinks fit. The head of the Department shall be responsible to the Dean for the organization of the teaching in that Department.

(5) The Dean of a Faculty shall be elected by the Faculty from among the heads of Departments of the Faculty. The Dean shall receive in respect of his duties as Dean such additional remuneration (if any) as shall be fixed by the Executive Council, and shall hold office as Dean for such term as may be prescribed by the Statutes.

**23.** The constitution, powers and duties of such other authorities as Other authorities of the University may be declared by the Statutes to be authorities of the University shall be provided for in the manner prescribed by the Statutes.

#### *University Boards.*

**24.** The University shall include a Residence, Health and Discipline Board, and such other Boards as may be prescribed by the Statutes.

**25.** The constitution, powers and duties of the Constitution, etc., of Boards to be prescribed by Ordinances. Residence, Health and Discipline Board and of all other Boards of the University shall be prescribed by the Ordinances.

#### *Statutes, Ordinances and Regulations.*

**26.** Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:—

- (a) the conferment of honorary degrees;
- (b) the institution of Fellowships, Scholarships, Exhibitions and Prizes;
- (c) the term of office and conditions of service of the Vice-Chancellor;
- (d) the designations and powers of the officers of the University;
- (e) the constitution, powers and duties of the authorities of the University;
- (f) the institution and maintenance of Colleges and Halls;
- (g) the recognition and management of Colleges and Halls not maintained by the University, and the withdrawal of such recognition;

- (h) the mode of appointment of the teachers of the University ;
- (i) the constitution of pension and provident funds for the benefit of the officers, teachers, clerical staff and servants of the University ;
- (j) the maintenance of a register of registered graduates ; and
- (k) all matters which by this Act are to be or may be prescribed by the Statutes.

**27. (1)** The first Statutes shall be those set out in the Schedule.

(2) The Statutes may be amended, repealed or added to by Statutes made by the Court in the manner hereinafter appearing.

(3) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court. Such draft shall be considered by the Court at its next meeting. The Court may approve such draft and pass the Statute, or may reject it or may return it to the Executive Council for re-consideration, either in whole or in part, together with any amendments which the Court may suggest.

(4) Where any Statute has been passed or a draft of a Statute has been rejected by the Court, it shall be submitted to the Governor General in Council, who may refer the Statute or draft back to the Court for further consideration or, in the case of a Statute passed by the Court, assent thereto or withhold his assent. A Statute passed by the Court shall have no validity until it has been assented to by the Governor General in Council.

(5) The Executive Council shall not propose the draft of any Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal. Any opinion so expressed shall be in writing and shall be considered by the Court, and shall be submitted to the Governor General in Council.

**28.** Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely :—

- (a) the admission of students to the University ;
- (b) the courses of study to be laid down for all degrees and diplomas of the University ;
- (c) the conditions under which students shall be admitted to the degree or diploma courses and to the examinations of the University and shall be eligible for degrees and diplomas ;
- (d) the conditions of residence of the students of the University and the conditions requisite for the recognition of Colleges and Halls not maintained by the University ;
- (e) the emoluments and conditions of service of teachers of the University ;
- (f) the fees to be charged for courses of study in the University and for admission to the examinations, degrees, and diplomas of the University ;

- (g) the giving of religious instruction ;
- (h) the formation of Departments of teaching in the Faculties ;
- (i) the constitution, powers and duties of the Boards of the University ;
- (j) the conduct of examinations ; and
- (k) all matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

**29. (1)** Save as otherwise provided in this section, Ordinances shall be made by the Executive Council :

Provided that—

- (i) no Ordinance shall be made affecting the conditions of residence of students, except after consultation with the Residence, Health and Discipline Board, and

(ii) no Ordinance shall be made—

- (a) affecting the admission of students, or prescribing examinations to be recognized as equivalent to the University examinations or prescribing the further qualifications mentioned in sub-section (2) of section 34 for admission to the degree courses of the University, or
- (b) affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study, or
- (c) affecting the emoluments or conditions of service of teachers of the University,

unless a draft of such Ordinance has been proposed by the Academic Council.

(2) The Executive Council shall not have power to amend any draft proposed by the Academic Council under the provisions of sub-section (1), but may reject it or return it to the Academic Council for re-consideration, either in whole or in part, together with any amendments which the Executive Council may suggest.

(3) All Ordinances made by the Executive Council shall be submitted, as soon as may be, to the Governor General in Council and the Court, and shall be considered by the Court at its next meeting. The Court shall have power, by a resolution passed by a majority of not less than two-thirds of the members voting, to cancel any Ordinance made by the Executive Council, and such Ordinance shall, from the date of such resolution, be void.

(4) The Governor General in Council may, at any time after any Ordinance has been considered by the Court, signify to the Executive Council his disallowance of such Ordinance, and, from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinance shall become void.

(5) The Governor General in Council may direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his power of disallowance. An order of suspension under this sub-section shall cease to have effect on the expiration of one month from the

date of such order, or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.

(6) Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Governor General in Council who may, if he approves the draft, make the Ordinance. An Ordinance made under this sub-section shall cease to have effect on the expiration of six months from the making thereof.

**30.** (1) The authorities and the Boards of the University may make Regulations. Regulations consistent with this Act, the Statutes and the Ordinances—

- (a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum ;
- (b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by Regulations ; and
- (c) providing for all other matters solely concerning such authorities and Boards and not provided for by this Act, the Statutes or the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered at meetings, and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this section or the annulment of any Regulation made under sub-section (1) :

Provided that any authority or Board of the University which is dissatisfied with any such direction may appeal to the Governor General in Council, whose decision in the matter shall be final.

#### *Residence.*

**31.** Every student of the University shall reside in a College or a Hall, or under such conditions as may be prescribed by the Statutes and the Ordinances.

**32.** (1) The Colleges shall be such as may be named in the Statutes.

(2) The conditions of residence in the Colleges shall be prescribed by the Ordinances, and every College shall be subject to inspection by any member of the Residence, Health and Discipline Board authorized in this behalf by the Board and by any officer of the University authorized in this behalf by the Executive Council.

**33.** (1) The Halls shall be such as may be approved and licensed by the Executive Council on such general or special conditions as may be prescribed by the Ordinances.

(2) The Wardens and superintending staff of the Halls shall be appointed in the manner prescribed by the Statutes.

(3) The conditions of residence in the Halls shall be prescribed by the Ordinances, and every Hall shall be subject to inspection by any member of the Residence, Health and Discipline Board authorized in this behalf by the Board and by any officer of the University authorized in this behalf by the Executive Council.

(4) The Executive Council shall have power to suspend or withdraw the licence of any Hall which is not conducted in accordance with the conditions prescribed by the Ordinances.

#### *Admission and Examinations.*

**34.** (1) Admission of students to the University shall be made by an admission committee (including at least one Principal) appointed for that purpose by the Academic Council.

(2) Students shall not be eligible for admission to a course of study for a degree unless they have passed the Intermediate Examination of an Indian University incorporated by any law for the time being in force, or an examination recognized in accordance with the provisions of this section as equivalent thereto, and possess such further qualifications as may be prescribed by the Ordinances.

(3) The conditions under which students may be admitted to the diploma courses of the University shall be prescribed by the Ordinances.

(4) The University shall not, save with the previous sanction of the Governor General in Council, recognize (for the purposes of admission to a course of study for a degree), as equivalent to its own degrees, any degree conferred by any other University, or, as equivalent to the Intermediate Examination of an Indian University, any examination conducted by any other authority.

**35.** (1) Subject to the provisions of this Act and of the Statutes, all arrangements for the conduct of examinations shall be made by the Academic Council in such manner as may be prescribed by this Act and the Ordinances.

(2) If during the course of an examination any examiner is for any cause incapable of acting as such, the Vice-Chancellor shall appoint an examiner to fill the vacancy.

(3) At least one examiner who is not a member of the University shall be appointed for each subject included in a Department of teaching and forming part of the course which is required for a University degree.

(4) The Academic Council shall appoint examination committees, consisting of members of its own body or of other persons or of both, as it thinks fit, to moderate examination questions, to prepare the results of the examinations and to report such results to the Executive Council for publication.

#### *Annual Report and Accounts.*

**36.** The annual report of the University shall be prepared under the direction of the Executive Council, and shall be submitted to the Court on or



before such date as may be prescribed by the Statutes, and shall be considered by the Court at its annual meeting. The Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit.

**37. (1)** The annual accounts and balance-sheet of the University shall be prepared under the direction of the Executive Council, and shall be submitted to the Governor General in Council for the purposes of audit.

(2) The accounts when audited shall be published by the Executive Council in the Gazette of India, and copies thereof shall, together with copies of the audit report, if any, be submitted to the Court and to the Governor General in Council. The Executive Council shall also submit to the Court, on or before such date as may be prescribed by the Statutes, a statement of the financial estimates for the ensuing year.

(3) The annual accounts and the financial estimates shall be considered by the Court at its annual meeting, and the Court may pass resolutions thereon and communicate the same to the Executive Council which shall take such action thereon as it thinks fit.

#### *Supplementary Provisions.*

**38.** The Chancellor shall, with the concurrence of not less than two-thirds of the members of the Executive Council for the time being in India, have power to remove the name of any person from the register of registered graduates.

**39.** If any question arises whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Chancellor, whose decision thereon shall be final.

**40.** Where any authority of the University is given power by this Act or the Statutes to appoint committees, such committees shall, save as otherwise provided, consist of members of the authority concerned and of such other persons (if any) as the authority in each case may think fit.

**41.** All casual vacancies among the members (other than *ex-officio* members) of any authority or other body of the University shall be filled, as soon as conveniently may be, by the person or body who appointed, elected or co-opted the member whose place has become vacant, and the person appointed, elected or co-opted to a casual vacancy shall be a member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

**42.** No act or proceeding of any authority or other body of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members,

**43.** Any dispute arising out of a contract between the University and any officer or teacher of the University shall, on the request of the officer or teacher concerned, be referred to a Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned, and an umpire appointed by the Chancellor. The decision of the Tribunal shall be final, and no suit shall lie in any Civil Court in respect of the matters decided by the Tribunal.

Every such request shall be deemed to be a submission to arbitration upon the terms of this section, within the meaning of the Indian Arbitration Act, 1899, and all the provisions of that Act, with the exception of section 2 thereof, shall apply accordingly. IX of 1899.

**44. (1)** The University shall constitute, for the benefit of its officers, Pension and provident funds. teachers, clerical staff and servants, in such manner and subject to such conditions as may be prescribed by the Statutes, such pension and provident funds as it may deem fit.

(2) Where any such pension or provident fund has been so constituted, the Governor General in Council may declare that the provisions of the Provident Funds Act, 1897, shall apply to such fund as if it were a Government Provident Fund. IX of 1897.

#### *Transitory Provisions.*

**45. (1)** If any difficulty arises with respect to the establishment or continuance of the University or any authority of the University or in connection with the first meeting of any authority of the University or otherwise in first giving effect to the provisions of this Act, the Governor General in Council may by order make any appointment or do anything which appears to him necessary or expedient for the purpose of removing the difficulty, and every such order shall have effect notwithstanding that it is inconsistent with any provision of this Act or the Statutes:

Provided that, before making any order inconsistent with this Act or the Statutes, the Governor General in Council shall ascertain and consider the opinion of the Vice-Chancellor, and of such other authorities of the University as have been constituted, on the proposed order.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), an order made under that sub-section may—

- provide for the conduct or framing of courses and the maintenance of classes and the conduct of examinations for the purpose of preparing or testing students for admission to the University;
- modify the powers of the officers and the constitution and powers of the authorities of the University as laid down in sections 14 to 22 and in the Statutes; and
- modify the arrangements for residence laid down in sections 31 to 33 and in the Statutes.

**46.** Notwithstanding anything contained in this Act or the Ordinances, any student of Delhi Colleges, any of the following Colleges at Delhi, namely, the St. Stephen's College,



the Hindu College and the Ramjas College, who, immediately prior to the commencement of this Act, was studying for any examination of the University of the Punjab higher than the Intermediate Examination, shall be permitted to complete his course in preparation therefor, and the University shall provide for such students instruction and examinations in accordance with the Prospectus of Studies of the University of the Punjab.

### THE SCHEDULE.

#### THE FIRST STATUTES OF THE UNIVERSITY.

[See section 27 (1).]

1. In these Statutes, unless there is anything repugnant in the subject or context,—

(a) "the Act" means the Delhi University Act, 1922, and "section" means a section of the Act; and

(b) "officers," "authorities," "Professors," "Readers," "Lecturers," "teachers," "clerical staff," "servants" and "registered graduates" mean, respectively, officers, authorities, Professors, Readers, Lecturers, teachers, clerical staff, servants and registered graduates of the University.

2. (1) In addition to the officers mentioned in sub-section (1) of section 16, the following persons shall be *ex-officio* members of the Court, namely:—

- (i) the Chief Commissioner of Delhi;
- (ii) the Director-General, Indian Medical Service;
- (iii) the Educational Commissioner with the Government of India;
- (iv) the Director of Public Instruction in the Punjab;
- (v) the Deputy Commissioner of Delhi;
- (vi) the Superintendent of Education, Delhi and Ajmer-Merwara;
- (vii) the Chairman of the Delhi Municipality;
- (viii) the Chairman of the Delhi District Board;
- (ix) the Superintending Engineer, Delhi;
- (x) the Civil Surgeon of Delhi;
- (xi) the Principals of the Intermediate Colleges in Delhi which prepare candidates for admission to the University.

(2) The number of graduates to be elected as members of the Court by the registered graduates from among their own body shall be twenty-five.

(3) The number of teachers to be elected as members of the Court by the teachers other than Professors and Readers shall be ten.

(4) The number of persons to be elected as members of the Court by associations or other bodies approved in this behalf by the Chancellor shall not exceed eight.

(5) The number of persons to be elected by the elected Members of the Council of State and the Legislative Assembly from among their own numbers shall be six,

(6) The number of persons to be appointed by the Chancellor under clause (xiii) of sub-section (1) of section 16 shall be fifteen:

Provided that, if the number of Muhammadan members elected under sub-clauses (2), (3) and (4) is less than one-third of the total number of members elected under those sub-clauses, not less than eight of the members nominated by the Chancellor shall be Muhammadans.

(7) Save as otherwise provided, members of the Court other than *ex-officio* members shall hold office for a period of three years:

Provided that members elected under clause (x) of sub-section (1) of section 16 shall hold office so long only within the said period as they continue to be teachers.

3. (1) The members of the Executive Council, Constitution of the in addition to the Vice-Executive Council. Chancellor and the Treasurer, shall be—

#### Class I.—*Ex-officio* members.

- (i) The Superintendent of Education, Delhi and Ajmer-Merwara;
- (ii) the Deans of the Faculties;
- (iii) the Principals.

#### Class II.—*Other* members.

(iv) Four members of the Court elected by the Court at its annual meeting, of whom at least one shall be a Muhammadan and at least two shall be graduates of the University elected by the registered graduates from among their own number;

(v) two members of the Academic Council elected by the Academic Council; and

(vi) two persons nominated by the Chancellor, of whom at least one shall be a Muhammadan.

(2) Members other than *ex-officio* members shall hold office for a period of three years:

Provided that members elected by any body of persons from among their own number shall hold office so long only within the said period as they continue to be members of the body which elected them.

4. Subject to the provisions of the Act, the Powers of the Executive Council shall have the following powers, namely:—

- (a) to institute, at its discretion, such Professorships, Readerships, Lectureships, or other teaching posts as may be proposed by the Academic Council;
- (b) to abolish or suspend, after report from the Academic Council thereon, any Professorship, Readership, Lectureship, or other teaching post;
- (c) to appoint, in accordance with the Statutes, teachers, officers, clerical staff and servants;
- (d) to appoint all the examiners after considering the recommendations of the Academic Council;

(e) to delegate, subject to such conditions as may be prescribed by Regulations made by the Executive Council, its power to appoint teachers, officers, clerical staff and servants to such person or authority as the Executive Council may determine ;

(f) to manage and regulate the finances, accounts, investments, property and all administrative affairs whatsoever of the University, and, for that purpose, to appoint such agents as it may think fit ;

(g) to accept bequests, donations and transfers of property to the University :

provided that all such bequests, donations and transfers shall be reported to the Court at its next meeting ;

(h) to provide the buildings, premises, furniture, apparatus, equipment and other means needed for carrying on the work of the University ;

(i) after report from the Finance Committee, to enter into, vary, carry out and cancel contracts on behalf of the University ; and

(j) to invest any monies belonging to the University, including any unapplied income, in any of the securities described in section 20 of the Indian Trusts Act, 1882, or in the purchase of immoveable property in India, with the like power of varying such investments ; or to place on fixed deposit in any bank approved in this behalf by the Governor General in Council any portion of such monies not required for immediate expenditure.

5. (1) The members of the Academic Council, in addition to the Vice-Chancellor, shall be—  
The Academic Council.

*Class I.—Ex-officio members.*

- (i) The Deans of the Faculties ;
- (ii) the Librarian of the University ;
- (iii) the Professors and Readers ; and
- (iv) the Principals.

*Class II.—Other members*

(v) Persons, if any, not exceeding three in number and not being teachers, appointed by the Chancellor on account of their possessing expert knowledge in such subjects of study as may be selected by the *ex-officio* members of the Academic Council.

(2) The Academic Council as constituted under sub-clause (1) shall co-opt as members teachers not exceeding one-tenth of its number as so constituted

(3) Members other than *ex-officio* members shall hold office for a period of three years :

Provided that teachers co-opted as such shall hold office so long only within the said period as they continue to be teachers.

6. The Academic Council shall have the Powers of the following powers, namely :—  
Academic Council.

(a) to make proposals to the Executive Council for the institution of Professorships, Readerships, Lectureships or other teaching posts, and in regard to the duties and emoluments thereof ;

(b) to make Regulations for, and to award in accordance with such Regulations, Fellowships, Scholarships, Exhibitions, bursaries, medals and other rewards ;

(c) to recommend examiners for appointment after report from the Faculties concerned ;

(d) to control and manage the University Library or Libraries, to frame regulations regarding their use, and to appoint a Library Committee under the general control of the Academic Council to manage the affairs of the Library ;

(e) to formulate, modify or revise, subject to the control of the Executive Council, schemes for the constitution or reconstitution of Faculties and for the assignment of subjects to such Faculties ;

(f) to assign teachers to the Faculties ;

(g) to promote research within the University and to require reports on such research from the persons employed thereon ;

(h) to provide for the inspection of Colleges and Halls and to submit reports thereon to the Executive Council ; and

(i) to organize the teaching of the University and to control the work of teachers and Colleges.

7. (1) Each Faculty shall consist of—  
The Faculties.

(i) the Heads of the Departments comprised in the Faculty ;

(ii) such teachers of subjects assigned to the Faculty as may be appointed to the Faculty by the Academic Council ;

(iii) such teachers of subjects not assigned to the Faculty but having, in the opinion of the Academic Council, an important bearing on those subjects, as may be appointed to the Faculty by the Academic Council ; and

(iv) such other persons as may be appointed to the Faculty by the Academic Council on account of their possessing expert knowledge in a subject or subjects assigned to the Faculty.

(2) The total number of members of each Faculty shall not exceed in the case of the Faculties of Arts and Science twenty-five, and in the case of any other Faculty fifteen, except with the sanction of the Chancellor given on the request of the Academic Council

**8.** Subject to the provisions of the Act, each Faculty shall have the following powers, namely :—  
Powers of the Faculties.

- (a) to constitute Committees of Courses and Studies; and
- (b) to recommend to the Academic Council, after consulting the Committees of Courses and Studies, the names of examiners in subjects assigned to the Faculty.

**9.** There shall be a Board of Co-ordination composed of the Vice-Chancellor, who shall be Chairman thereof, the Deans of the Faculties and the Registrar, to co-ordinate the teaching of the University, and in particular to co-ordinate the work and time-tables of the various Faculties, and to assign lecture-rooms, laboratories, and other rooms to the Faculties.

**10.** (1) The Dean of each Faculty shall be the executive officer of the Faculty, and shall preside at its meetings. He shall hold office for three years.

(2) He shall issue the lecture lists of the University in the Departments comprised in the Faculty, and shall be responsible for the conduct of teaching therein.

(3) He shall have the right to be present and to speak at any meeting of any committee of the Faculty, but not to vote unless he is a member of the committee.

**11.** (1) The appointment of a Warden shall, in the case of a Hall maintained by the University, be made by the Executive Council, and in other cases be subject to the approval of the Executive Council.

(2) Every student not residing in a College or Hall shall be attached to a College or Hall for tutorial help and disciplinary supervision, and for such other purposes as may be prescribed by the Ordinances.

**12.** The Court may, on the recommendation of the Executive Council, by a resolution passed with the concurrence of not less than two-thirds of the members voting, withdraw any degree or diploma conferred by the University.

**13.** (1) All proposals for the conferment of honorary degrees shall be made by the Academic Council to the Executive Council, and shall require the assent of the Court before submission to the Chancellor for confirmation :

Provided that, in cases of urgency, the Chancellor may act on the recommendation of the Executive Council only.

(2) Any honorary degree conferred by the University may, with the previous approval of the Court and the sanction of the Chancellor, be withdrawn by the Executive Council.

**14.** The following persons shall, on payment of such fees as may be prescribed by the Statutes, be entitled to have their names enrolled in the register of registered graduates and to enjoy all the privileges of registration, namely :—

- (a) for a period of five years from the commencement of the Act, all graduates of three years' standing or upwards of any other Indian University incorporated by any law for the time being in force, or of any University in the United Kingdom, who are not for the time being registered as graduates of such University, and who reside in the Province of Delhi and apply to the University to be granted *ad eundem* degrees of the University; and
- (b) all graduates of the University of three years' standing and upwards.

**15.** There shall be the following officers, namely :—

- (i) a Proctor for the maintenance of the general discipline of the University, to whom the Vice-Chancellor may delegate such of his disciplinary powers as he may think fit; and
- (ii) a Librarian for the University Library.

**16.** (1) Appointments to posts of teachers shall be made on the nomination of committees of selection constituted for the purpose as follows, namely :—

- (i) the Vice-Chancellor;
- (ii) the Dean of the Faculty concerned;
- (iii) two members of the Executive Council selected by the Executive Council;
- (iv) two members of the Academic Council selected by the Academic Council on the ground of their special knowledge of, or interest in, the subject or subjects with which the teacher will be concerned;
- (v) a representative of the Governing Body of each College; and
- (vi) three persons (two of whom shall not be officers of the University) appointed by the Chancellor.

(2) Committees of selection appointed under sub-clause (1) shall report to the Executive Council which shall, if it accepts the nomination of the committee, make the appointment to the post accordingly. If the Executive Council does not accept the nomination of the committee, it shall refer the case to the Chancellor, who shall make such appointment as he thinks fit.

## STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is the establishment and incorporation of a unitary, teaching and residential University at Delhi. It is intended to provide for a local University on the model recommended in the case of Dacca by the Calcutta University Commission. Delhi is a suitable centre for the location of such a University, being the winter capital of the Government of India and already containing three Arts Colleges as well as the Lady Hardinge Medical College for Women. Moreover, should the Punjab University undergo reorganisation in view of the recommendations of the Commission, it appears probable that the existence of colleges at Delhi would complicate the problem, while any concentration of higher teaching in Lahore would be likely to react unfavourably upon those colleges. The general scheme for a University at Delhi has been under consideration with the representatives of the local colleges from time to time during the last two years, and the details have further been considered by a sub-committee.

2. The provisions of the Bill generally follow those contained in the Dacca University Act, though in certain points the provisions of the Lucknow University Act have been preferred. Among the divergencies from the Dacca University Act which are deserving of mention, are the following :

- (i) The proportion of members of the Court nominated by the Chancellor has been reduced in comparison with the number of members elected by registered graduates.
- (ii) At least two of the members elected by the Court as their representatives on the Executive Council are to be members of the Court elected by registered graduates.
- (iii) No provision is made for a Selection Committee in England.
- (iv) Communal representation is provided only to a limited degree and no provision is made for such representation in the academic body.

Other modifications are dictated by local circumstances. The Government will be the Government of India and the Chancellor the Governor General. There is some modification in the distribution of functions between the Government, the Chancellor and the Vice-Chancellor. The existing colleges will retain the name of colleges and the power of appointment of their staff; but the recognition of the members of the staff of a college as teachers of the University will be given by the University itself. The Faculties which will be instituted as soon as possible are those of Arts, Science, Medicine and Commerce.

3. As the provision of sufficient funds for the complete realisation of this University and the erection of suitable buildings will be a matter of time, it is proposed in the first instance to commence work with the existing colleges in their present buildings and to permit them gradually to modify their organisation, especially with reference to the separation of intermediate classes, in such a manner as to permit of the development of the University in its eventual form. In order that this may be done without undue dislocation in the colleges, the transitory provisions are particularly wide and permit of considerable divergence during the initial years from the form of the University as eventually contemplated.

H. SHARP.

DELHI ;

The 15th January, 1922. }

H. MONCRIEFF SMITH,  
Secretary to the Government of India.

## GOVERNMENT OF INDIA

## LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of State on the 17th January, 1922 :—

No. 1 OF 1922.

*A Bill to amend the Benares Hindu University Act, 1915.*

WHEREAS it is expedient to amend the Benares Hindu University Act, 1915; It is hereby enacted XVI of 1915. as follows :—

1. This Act may be called the Benares Hindu University (Amendment) Act, 1922.  
Short title.
  2. For sub-section (2) of section 9 of the Benares Hindu University Act, XVI of 1915, the following shall be substituted, namely :—  
Amendment of section 9, Act XVI of 1915.
- “(2) No person not being a Hindu shall become or be appointed a member of any Court other than the first Court unless he has been a member of the first Court.”

## STATEMENT OF OBJECTS AND REASONS.

The Bill is intended to give effect to a Resolution passed by the Court of the Benares Hindu University. Under section 9, sub-section (2) of the Benares Hindu Universities Act, 1915 (XVI of 1915), no person, not being a Hindu, may become, or be appointed, a member of the Court, save in the case of the first Court. The object of the legislation proposed is to permit the retention on the Court of any member, even though not a Hindu, of the first Court of the University.

DELHI:

*The 11th January, 1922.*

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MUHAMMAD SHAFI.

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H. MONCRIEFF SMITH,  
*Secretary to the Government of India.*

## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Legislative Assembly on the 17th January, 1922 :—

## No. 2 OF 1922.

*A Bill to further amend the Code of Criminal Procedure, 1898.*

WHEREAS it is expedient to enable all High Courts to issue directions in the nature of a Habeas Corpus in the case of all persons over whom they have jurisdiction, original or appellate ; It is hereby enacted as follows :—

1. This Act may be called the Code of Criminal  
Short title, Procedure (Amendment)  
Act, 192 .
2. In sub-section (1) of section 491 of the  
Amendment of sec- Code of Criminal Procedure, V of 1898.  
tion 491, Act V of 1898—  
1898.

- (a) the words “ at Fort William, Madras and Bombay,” shall be omitted, and
- (b) in clause (a) after the word “ jurisdiction ” the words “ or appellate jurisdiction ” shall be inserted.



## STATEMENT OF OBJECTS AND REASONS.

There is no reason why all High Courts should not have the power to issue directions in the nature of Habeas Corpus, nor is there any adequate reason why the protection afforded by the section should be confined only to persons living within the ordinary original jurisdiction of a High Court. In the case of European British subjects the power to deal with unlawful detention of persons is given to all High Courts, and extends to persons within the appellate jurisdiction also.

The object of this amendment is to extend the scope of the section so as to include all High Courts and all persons subject to the appellate jurisdiction. Experience has shown that such an extension is necessary.

MADRAS :

*The 19th July, 1921.*

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T. RANGACHARIAR.

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H. MONCRIEFF SMITH,  
*Secretary to the Government of India.*

GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the law relating to emigration was presented to the Legislative Assembly on the 18th January, 1922:—

We, the undersigned, Members of the Select Committee to which the Bill to amend the

Paper No. I :

- Letter from the Chief Commissioner, Delhi, dated 5th May 1921.
- Letter from the Agent to the Governor General and Chief Commissioner in Baluchistan, dated 7th May 1921.
- Letter from the Chief Commissioner, North-West Frontier Province, dated 19th May 1921.
- Letter from the Registrar of the High Court of Judicature at Fort William in Bengal, dated 26th May 1921.
- Letter from the Chief Commissioner, Coorg, dated 25th June 1921, and enclosures.
- Letter from the Chief Commissioner, Ajmer-Merwara, dated 28th June 1921.
- Letter from the Government of Assam, dated 30th June 1921, and enclosures

law relating  
to emigration  
was referred,  
have considered  
the Bill and  
the papers  
noted in the  
margin, and

Paper No. II :

- Letter from the Government of Burma, dated 1st July 1921.
- Letter from the Government of the United Provinces, dated 4th July 1921, and enclosures.
- Letter from the Government of Bihar and Orissa, dated 6th July 1921, and enclosures.
- Letter from the Government of the Punjab, dated 14th July 1921.

have now the  
honour to sub-

Paper No. III :

- Letter from the Government of Bengal, dated 4th August 1921, and enclosures.
- Letter from the Government of the Central Provinces, dated 16th July 1921, and enclosures.
- Letter from the Government of Madras, dated 15th July 1921.
- Letter from the Government of Bombay, dated 18th July 1921, and enclosures.

Report, with  
the Bill as  
amended by  
us annexed  
thereto.

In *clause 1* we have inserted an extent clause in the form in which it appears in the Indian Emigration Act, 1908.

In *clause 2*—

(1) We have revised the definition of "dependent" with the object of restricting an emigrant's dependents to his relatives. It is possible that in certain cases the dependents of an emigrant may not travel by the same ship as the emigrant, and we have, therefore, omitted the words "accompanying an emigrant."

(2) In the definition of "emigrant," we have restored the words "and includes any dependent of an emigrant" which are in the Act of 1908. We have also excluded from the definition of emigrant two classes of persons to whom we consider that the Act should not apply. The first class consists of persons who have lived abroad as emigrants for five years and their families, and the second class consists of the families of persons who have lawfully emigrated.

(3) We have re-drafted without making any change of substance the definition of "emigrate" and "emigration," and we have made it clear that assistance does not include assistance of a relative. On this last point, we have provided for the settling of doubts by an addition to clause 2 (ii).

*Clauses 3 and 5.*—As emigration is a central subject, we considered that the power of the Local Government to appoint Protectors of Emigrants should be expressed to be subject to the control of the Governor General in Council. We have supplied an omission by providing that a person appointed under clause 5 to perform the duties of a Protector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

*Clause 4 (c).*—The Bill, as introduced, imposed on the Protector of Emigrants a duty which it would have been impossible for him to perform. We have modified this sub-clause to allow of the extent and manner of inspection being prescribed by rule.

*Clause 4 (d).*—The change is verbal only.

*Clause 4 (f).*—For the protection from annoyance at the time of leaving India of the two classes of persons excluded from the definition of emigrant, we have provided that the Protector of Emigrants shall, on application, issue certificates stating that the Act does not apply to those persons. It will not be obligatory on such persons to obtain these certificates, and the certificates themselves will not be conclusive proof that such persons belong to the class to which they claim to belong. But we think that the grant of the certificates will afford a fair measure of protection and that the provision is desirable in view of the powers of arrest with which the Police are necessarily invested.

*Clause 6.*—If intending emigrants are collected at places other than a port from which emigration is allowed, it is desirable that there should be statutory power to appoint Medical Inspectors at such a place.

*Clause 7.*—The change is of drafting only.

*Clause 8.*—We have supplied an omission.

*Clause 9.*—As there is a steady flow of emigrants to Ceylon and the Straits Settlements from the ports of Tuticorin, Negapatam and Dhanushkodi, we have thought fit to insert those ports by name in the Bill.

*Clause 11.*—We consider that the Central Government should have concurrent powers with the Local Governments under this clause, as the information may reach the Central Government first. The re-drafting of clause 11 to give this power involves the re-drafting of clause 12.

*Clause 13.*—As emigration is a central subject, we consider that the prohibition should issue in the name of the Governor General in Council. Owing to the special interest taken by the Legislature in matters of emigration, we consider that reasons for issuing the Notification should be stated therein, and that the Notification should be brought to the notice of Members of the Legislature by being laid on the table.

*Clause 16.*—The alterations are of drafting only.

*Clause 19.*—This clause as introduced reproduces *verbatim* the contents of section 78 of the Indian Emigration Act, 1908; but we consider that it should be amplified in order to make it clear that the security furnished by a person engaging an emigrant for skilled work shall in no case be returned to him until after the expiry of the period covered by the engagement, and until the Local Government is satisfied that the emigrant has been fairly treated.

*Clause 21.*—We have provided that the issue of a prohibitory Notification shall be brought to the notice of the Legislature.

*Clause 23.*—Emigration being a central subject and some degree of uniformity being desirable in the different provinces, we have thought fit to make the rule-making powers of the Local Governments subject to the control of the Governor General in Council.

*Clause 24.*—We have thought proper to set forth in greater detail the matters in respect of which rules are liable to be made. We are content, so far as the Bill is concerned, that subject to the condition of previous publication already provided, the Governor General in Council should be the rule-making power. At the same time, we think we are not exceeding our functions in placing on record our opinion that on the passing of this Bill a Standing Committee should be constituted which would be consulted by the Governor General in Council before the issue of any rules under this clause.

*Clause 25.*—We have remodelled this clause and have reduced the maximum penalty for the comparatively minor offences of unlawfully emigrating, or attempting to emigrate, to Rs. 50. In sub-clause (2) (a), we have supplied an omission. We have re-drafted sub-clause (2) (b) to meet a doubt whether a person residing at a port of embarkation could, in view of the definition of "emigrate", be said to leave that port for the purpose of emigrating, and by the new sub-clause (c) we have inserted a provision which had inadvertently dropped out in the drafting of the Bill, reproducing the contents of clause (c) of section 96 of the Indian Emigration Act, 1908.

*Clause 28.*—In adding the proviso to this clause, we have followed a suggestion of the Allahabad High Court. It appears to us desirable that, where an emigrant or intended emigrant has been victimised, he or certain near relatives should have the right to complain.

*Clause 30 (1).*—The insertion in sub-clause (1) is consequential on the insertion in the definition of "emigrate" and "emigration" in clause 2.

*Clause 30 (2).*—The alteration in sub-clause (2) and the addition of sub-clause (3) are consequential on the alterations effected in clause 25.

*Clause 31 (1).*—We have been advised that the despatch of an Expeditionary Force of the Indian Army would only be permissible under this Bill, in accordance with the provisions of Chapter IV after a Notification under clause 2 (1) (f). As the Bill was never intended to apply either to combatants or to labour corps, we have definitely excluded them from its operation.

*Clause 32.*—The existing Act does not touch emigration to Ceylon, the Straits Settlements and the Malay States, but on the passing of this Bill into law emigration to these countries will be subject to the provisions of the law, and consequently emigration will be interrupted pending the issue of Notifications under clause 10, the framing of rules under clauses 23 and 24 and the appointments of officers under various clauses. For this reason we have exempted from the operation of this Bill for the space of one year emigration to those countries.

2. The Bill was published as follows:—

<i>Gazette</i>	<i>In English.</i>	<i>Date.</i>
Gazette of India.		26th March 1921.
Fort Saint George Gazette		12th April 1921.
Bombay Government Gazette		26th May 1921.
Calcutta Gazette		18th April 1921.
United Provinces Gazette		23rd April 1921.
Punjab Government Gazette		3rd June 1921.
Bihar and Orissa Gazette		27th April 1921.
Central Provinces Gazette		9th April 1921.
Assam Gazette		27th April 1921.
Coorg District Gazette		1st July 1921.
Sind Official Gazette		7th April 1921.
North-West Frontier Province Gazette		6th May 1921.

<i>Province.</i>	<i>In the Vernaculars.</i>	<i>Date.</i>
	<i>Language.</i>	
Madras	Tamil	3rd May 1921.
	Telugu	26th April 1921.
	Hindustani	3rd May 1921.
	Kanarese	7th June 1921.
	Malayalam	17th May 1921.
	Uriya	17th May 1921.
Bombay	Marathi	23rd June 1921.
	Gujarathi	
	Kanarese	
Bengal	Bengali	25th July 1921.
United Provinces Gazette	Urdu	7th May 1921.
Punjab	Urdu	3rd June 1921.
Coorg.	Kanarese	1st July 1921.
Sindh.	Sindhi	2nd June 1921.

3. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

T. B. SAPRU.

J. CHAUDHURI.

N. M. JOSHI.\*

LAKSHMINARAYAN LAL,†

T. RANGACHARIAR.‡

C. A. INNES.

J. HULLAH.

The 16th January, 1922.

\* Subject to the Minute of Dissent.

† Subject to my Minute of Dissent.

‡ Subject to my amendment as contained in my note hereto.

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MINUTE OF DISSENT.

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1. I do not approve of placing this Act, which obviously restricts the legitimate freedom of action of labourers, permanently on the Statute-book. The main reason for the existence of such an Act is political, and as I confidently hope that the political conditions will rapidly improve, I think this Act should be passed for a limited period, say, five years.

2. I am not in favour of section 2b (1). I think the mere detention of the labourer should suffice. It is wrong to fine a man for doing a thing which is legitimate, but which he is not allowed to do for political reasons.

N. M. JOSHI.

## MINUTE OF DISSENT.

(Recorded under Standing Order 41 (5) of the Assembly by Rai Sahib Lakshmi Narayan Lal to the Report, by the Select Committee, on the Emigration Bill.)

## CHAPTER I.

(1)

*Clause 2 (c).*

The Statement of Objects and Reasons of the Bill shows that the first object of the Bill is to prevent indentured emigration. In the words of the Honourable Sir George Barnes one of the objects of the Bill is to safeguard ourselves against the resurrection of indentured emigration in any form, but the very definition of an emigrant in clause 21 (c), as a person "under an agreement to work for hire" suggests indentured emigration. The Bill should not itself contain provisions which may be interpreted as contemplating the possibility of indentured emigration, rather it should state in clear terms that the emigration of any worker under an agreement to work for hire will not be allowed, and that if the Indian emigrates he shall go free of any indenture and shall not be allowed to enter into any agreement to work for hire or to engage in any particular emigration. If there should be a contract about pay, repatriation, etc., of the emigrants, it should be between the Government of India and the Government of the country of emigration, and if the latter countenances the placing on contract of any emigrant after his arrival in that country, the fact should be considered sufficient ground for suspending or prohibiting altogether emigration to that country. The words (a) "under an agreement to work for hire or when" and (b) "so to depart" should be omitted from this definition.

(2)

*Clause 2, f) and (g).*

The definitions of "skilled work" and "unskilled work" have been framed according to the purposes for which the employer engages or assists the emigrant.

The same person who can be engaged or assisted for the purpose of unskilled work can be really well engaged or assisted in the name of skilled work as a shop assistant, domestic servant, etc., and be actually engaged in agriculture or other unskilled work in the country of emigration. Such a definition, therefore, may serve to frustrate the object of clause 10 (2) and persons may be engaged or assisted to emigrate in the name of "skilled work" and be actually engaged in unskilled work even in the country to which emigration may not be permitted by the Indian Legislature under clause 10 (2).

The definition of "skilled work" should be made more definite by fixing any minimum standard of pay for "skilled work," and "unskilled work" should be placed below that standard.

(3)

## CHAPTER II.

*Clauses 3 (1) and 5.*

A Protector of Emigrants should be appointed in every province containing any port from where emigration is lawful, and he should be in charge of a reliable Bureau of Information for supplying the details of the conditions prevailing in the countries of emigration to anybody who wants to know the same.

(4)

*Clause 7.*

The Governor General in Council should appoint an agent in every foreign state of emigration and should arrange with the foreign state concerned for the recognition of such agents, arranging with foreign states for such recognition and generally for the safeguarding of the interests of the emigrants should be the essential preliminary to emigration to such countries being permitted; no emigration should be permitted to countries the administration whereof would not be prepared to recognise the agent or to listen to him to relieve reasonable grievances of the emigrants and give them adequate protection.

(5)

*Clause 8.*

The Advisory Committee should consist of non official members, including partly some of the non-official members of the Legislative Council of the Province and should be elected by the Legislative Council every year.

In order to exercise an effective control on the agents of the employers, every member of the committee should be authorised to enter into and inspect the emigrants depôts or quarters of the Province.

## CHAPTER III.

(6)

*Clause 9 (1).*

As India stands much in the need of her own sons for the development of her Industries upon which the success of the Reforms largely depends; if indentured emigration is at all to be introduced, it should in no case be allowed for the purpose of "unskilled work"; only those who may have better prospects of fixed minimum standard of pay may leave their hearth and home and emigrate for the skilled work. (On being assisted by the employer but without any engagement) under the next Chapter; of course those who like may emigrate freely and the Act does not apply to them; in any case the following provisions are essential:—

(7)

*Clause 1.*

The provisions of section 4 (2) of the old Act have been omitted. They are as follows:—

*Section 4 (2) of Act XVII of 1908.*

"Every notification under this section must contain a declaration that the Governor General in Council has been duly certified that the Government of the country to which the notification refers has made such laws and other provisions as the Governor General in Council thinks sufficient for the protection of emigrants to that country during their residence therein."

This section should be reproduced with the following additions at the end:—

"and has recognised equality of status and citizenship of British Indians in that country."

(8)

*Clause 10 (2).*

When the Indian Legislature has been given the power of approving the notification it should also be vested with the power of cancelling the said approval whenever it considers it so desirable.

(9)

*Clause 13.*

In consonance with the principles of clause 10 (2), this power to prohibit emigration should also be vested in the Indian Legislature.

## CHAPTER IV.

(10)

*Clause 15.*

This clause does not make any provision as to the countries to which emigration shall be lawful. The provisions of section 10 (1) and (2) should apply to "skilled work" emigration also.

(11)

*Clause 16.*

Under these clauses the application can be made regarding emigrants for "skilled work" who are either to be engaged or assisted; in no case the application should be allowed for



emigrants to be engaged on hire (for the reasons stated in the definitions of "skilled" and "unskilled" labour clause 2 (f) and (g)).

In any case the provisions for the health, safety, general welfare and security, etc., contained in clause 16 (d) (i), (ii) and (iii) should be made applicable to those emigrants also who are assisted to emigrate for "skilled work."

The security should be cash security sufficient to adequately compensate every emigrant.

(12)

*Clause 21.*

In the case of "unskilled work" section 10 (2) vests the power of approval of the notification in the Indian Legislature, but no such power has been given in the case of "skilled work"; at least the power of prohibition under this clause should be vested in the Indian Legislature.

CHAPTER V.

(13)

*Clauses 23 and 24.*

Many of the sections of the old Act regarding the welfare of the emigrant have been omitted in this Bill with an idea of making those provisions under these rules; this has clearly the effect of curtailing the power of the Legislature, which, after the inauguration of the Reforms, should be augmented; these powers should therefore be vested in the Indian Legislature.

CHAPTER VI.

(14)

*Clause 25 (a).*

The Bill does not apply to free emigrants but only to those who emigrate on being engaged or assisted, so the real offender is the man who engages or assists to emigrate against the law and not the emigrant himself; any provision for punishing the emigrant will prove an obstacle to free emigration and will create an additional source of trouble to the people. So the emigrant should not be arrested or punished but should be prevented from emigrating unless and until he proves before the Protector that he is free emigrant; in no case the dependents (who are included in the definition of emigrant under clause 2 (1) (b)) should be made to suffer.

(15)

The suggestions made herein are in consonance with some of the opinions of those who were invited to furnish the same.

I hold that in order that the report of the Committee be convincing to the Assembly to those from whom opinions have been invited as well as to the general public, all such opinions should be classified under the different clauses to which they relate and the grounds for agreeing with or differing from them should be mentioned in the report.

LAKSHMINARAYAN LAL,

*The 14th January, 1922,*

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MINUTE OF DISSENT.

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I sign this Report subject to my reserving the right to move the following addition to section 10 of the Bill :—

“Emigration should ordinarily be permitted to countries only in which—

- (a) Indians when not naturalised are subjected to no disabilities to which the nationals of other European countries are not subjected ;
- (b) Indians can be naturalised on the same essential conditions on which nationals of other European countries can be naturalised ;
- (c) Indians, if naturalised, enjoy full rights of citizenship ; and
- (d) generally, Indians enjoy substantially the same political rights as other classes of His Majesty's subjects.”

T. RANGACHARIAR.

[AS AMENDED BY THE SELECT COMMITTEE.]

[Words printed in italics indicate the amendments suggested by the Committee.]

*A Bill to amend the law relating to emigration.*

WHEREAS it is expedient to amend the law relating to emigration; It is hereby enacted as follows:—

## CHAPTER I.

### PRELIMINARY.

1. (1) This Act may be called the Indian Short title and ex- Emigration Act, 1922. tent.

(2) *It extends to the whole of British India.*

2. (1) In this Act, unless there is anything Definitions. repugnant in the subject or context,—

(a) “dependent” means any woman or child who is related to an emigrant and any aged or incapacitated relative of an emigrant;

(b) “emigrant” means any person who emigrates or has emigrated or who has been registered as an emigrant under this Act, and includes any dependent of an emigrant, but does not include—

(i) any person emigrating to a country in which he has resided for not less than five years or the wife or child of such person, or

(ii) the wife or child of any person who has lawfully emigrated when such wife or child departs for the purpose of joining such person;

(c) “emigrate” and “emigration” mean the departure by sea out of British India of—

(i) any person who departs under an agreement to work for hire in any country beyond the limits of India, and

(ii) any person who is assisted to depart, otherwise than by a relative, if he departs for the purpose or with the intention of working for hire or engaging in agriculture in any country beyond the limits of India;

(d) “prescribe” means to prescribe by rules made under this Act;

(e) “work,” with its grammatical variations, means skilled or unskilled work;

(f) “skilled work” means—

(i) working as an artisan; or

(ii) working as a clerk or shop assistant; or

(iii) working for the purpose of any exhibition or entertainment; or

(iv) service in any restaurant, tea-house, or other place of public resort; or

(v) domestic service; or

(vi) any other occupation which the Governor General in Council may, by notification in the Gazette of India, declare to be skilled work;

(g) “unskilled work” includes engaging in agriculture.

(2) In case of any doubt or dispute arising otherwise than in the course of any legal proceedings, as to whether—

(a) any person is an emigrant, or

(b) any work is skilled or unskilled, or

(c) any person has been assisted otherwise than by a relative,

within the meaning of this Act, the question shall be determined by such person and in such manner as the Local Government may prescribe, and such determination shall be final.

## CHAPTER II.

### PROTECTORS OF EMIGRANTS AND MEDICAL INSPECTORS.

3. (1) Subject to the control of the Governor General in Council, the Appointment of Pro- Local Government may tectors of Emigrants. appoint a person to be the Protector of Emigrants for any port situate within the territories administered by it from which emigration is lawful.

(2) The Local Government may define the area to which the authority of a Protector of Emigrants so appointed shall extend.

(3) Every Protector of Emigrants shall be a public servant within the meaning of the Indian Penal Code. XLV of 1860.

4. Every Protector of Emigrants, in addition to the special duties assigned General duties of to him by or under this Act, Protector. shall—

(a) protect and aid with his advice all emigrants;

(b) cause, so far as he can, all the provisions of this Act and of the rules made thereunder to be complied with;

(c) inspect, at the time of arrival, to such extent and in such manner as the Local Government may prescribe, vessels bringing return emigrants to the port for which he is Protector;

(d) inquire into the treatment received by return emigrants both during the period of their residence in the country to which they emigrated, and also during the return voyage, and report hereon to the Local Government;

(e) aid and advise return emigrants so far as he reasonably can; and

(f) on being satisfied that any person intending to depart by sea out of British India comes within one of the classes expressly excluded from the definition of emigrant in section 2, furnish such person with a certificate to the effect that such person is not an emigrant for the purposes of this Act.

5. (1) In any specified area where there is not Power to appoint a Protector of Emigrants, persons to exercise functions of a Protector. subject to the control of the Governor General in Council, may appoint any person to perform all or any of the duties of a Protector of Emigrants under this Act.

(2) Every person so appointed shall be a public servant within the meaning of the Indian Penal Code.

6. (1) The Local Government may appoint one or more Medical Inspectors of Emigrants at any port from which emigration is lawful or at any other place, and, where more than one are appointed, may apportion their respective duties.

(2) Every Medical Inspector of Emigrants shall be a public servant within the meaning of the Indian Penal Code.

7. The Governor General in Council may, for the purpose of safeguarding the interests of emigrants in any place outside British India, appoint persons to be agents in such places, and may define their powers and duties.

8. The Local Government may, for the purpose of assisting any Protector of Emigrants appointed by it or any person appointed by it under section 5, constitute an Advisory Committee in such manner as it may think fit, and may prescribe the procedure to be followed and the functions to be performed by such committee.

### CHAPTER III.

#### EMIGRATION FOR THE PURPOSE OF UNSKILLED WORK.

9. (1) Emigration, for the purpose of unskilled work, shall not be lawful except from the ports of Calcutta, Madras, Bombay, Karachi, Negapatam, Tuticorin and Dhanushkodi, and from such other ports as the Governor General in Council may, by notification in the Gazette of India, declare to be ports from which such emigration is lawful.

(2) The Local Government may, by notification in the local official Gazette, fix for the purposes of this Act the limits of any port from which such emigration is lawful.

10. (1) Emigration of unskilled work, shall not be lawful except to such countries and on such terms and conditions as the Governor General in Council, by notification in the Gazette of India, may specify in this behalf.

(2) No notification shall be made under sub-section (1) unless it has been laid in draft before both Chambers of the Indian Legislature and has been approved by a resolution of each Chamber, either without modification or addition, or with modifications and additions to which both Chambers agree, but, upon such approval being given, the notification may be issued in the form in which it has been so approved.

11. (1) Where the Governor General in Council has reason to believe that in any country to which emigration for the purpose of unskilled work is lawful plague or any other epidemic disease dangerous to human life has broken out, and that emigrants if allowed to emigrate to that country would be exposed to serious risk to life on arrival, there, he may, by notification in the Gazette of India, declare that emigration to that country for the purpose of unskilled work shall cease to be lawful.

(2) Where a Local Government has reason to believe that such a state of affairs as is described in sub-section (1) exists in any country to which emigration for the purpose of unskilled work is lawful, it may, by notification in the local official Gazette, declare that emigration to that country for the purpose of unskilled work from any port in the territories administered by it shall cease to be lawful pending a reference to the Governor General in Council.

(3) The Local Government publishing a notification under sub-section (2) shall forthwith report such notification with the reasons for it to the Governor General in Council, who shall thereupon publish a notification in the Gazette of India confirming or cancelling the notification published by the Local Government.

12. Where the Governor General in Council is satisfied that the ground, on which a notification under sub-section (1) of section 11, or a notification under sub-section (3) of section 11 confirming a notification of a Local Government has been made with respect to any country, has ceased to exist, he may, by notification in the Gazette of India, declare that emigration to that country for the purpose of unskilled work shall again be lawful from a date to be specified in the notification.

13. (1) The Governor General in Council may, by notification in the Gazette of India, prohibit, from a specified country, on or after a specified date, and for reasons to be specified in the notification, persons or any specified class of persons from emigrating to any specified country from the territories under the administration of any Local Government or any specified part thereof, for the purpose of unskilled work.

(2) Every notification issued under this section shall be laid before both Chambers of the Indian Legislature as soon as may be after it is made.

14. A notification under section 10, section 11, section 12 or section 13 shall not affect any act done, offence committed, or legal proceedings commenced before the date on which such notification takes effect.

### CHAPTER IV.

#### EMIGRATION FOR THE PURPOSE OF SKILLED WORK.

15. Emigration, for the purpose of skilled work, shall not be lawful except from a port from which emigration for the purpose of unskilled work is lawful and from such

other ports as the Governor General in Council may, by notification in the Gazette of India, specify in this behalf.

**16.** (1) Whoever desires to engage, or to assist, any person to emigrate for the purpose of skilled work shall apply for the permission of the Local Government having jurisdiction at the port from which such person is to depart, and shall state in his application—

- (a) the number of persons whom he proposes so to engage or assist;
- (b) the place beyond the limits of India to which each such person and his dependents are to proceed;
- (c) the accommodation to be provided for each such person and his dependents until their departure out of India and during the voyage.

(2) Whoever desires to engage any person for the purpose described in sub-section (1) shall, in addition to the information which he is required by that sub-section to supply in his application, further state therein—

- (a) the provision to be made for the health and well-being of such person and his dependents during the period of the proposed engagement and for his repatriation at the end of such period;
- (b) the terms of the agreement under which such person is to be engaged;
- (c) the security in British India which he proposes to furnish for the due observance of such agreement and for the proper treatment of the person to be engaged and his dependents.

**17.** On receiving an application under section 16, the Local Government may, after such inquiry as it may deem necessary, grant the permission applied for on such terms and conditions (if any) and on payment of such fees (if any) as it thinks fit, or withhold such permission, and the decision of the Local Government shall be final.

**18.** (1) Before any person departs from British India in accordance with permission granted under section 17, the person by whom he has been engaged or assisted shall appear in person or by his duly authorised agent before the Protector of Emigrants at the port of embarkation with such first-mentioned person and with any persons intending to accompany him as his dependents.

(2) If it appears to the Protector of Emigrants—

- (a) that permission to engage or assist such person has been duly obtained,
- (b) in the case of an engagement, that the terms of the agreement under which such person has been engaged are in accordance with the terms of the permission granted and are understood by him, and

(c) that the conditions on which the permission was granted have been complied with,

he shall register in a book to be kept for the purpose such particulars concerning the person engaged or assisted and his dependents (if any) and concerning the person engaging or assisting him, and in such form, as the Local Government may prescribe.

**19.** Where such security as is referred to in sub-section (2) of section 16 has been furnished, the Local Government may, at any time after making such inquiry as it may deem necessary, pass orders in regard to the forfeiture of the security in whole or in part and the application of the same or any part thereof, and, on the expiry of the period to which the agreement relates and on being satisfied that no ground exists for forfeiting the security in whole or in part, order the return of the security or of any part thereof to the person by whom it was furnished or to his representative.

**20.** The Local Government may, by notification in the local official Gazette, authorise a Protector of Emigrants to receive and dispose of applications made under this Chapter;

Provided that an appeal shall lie to the Local Government from every order passed by a Protector of Emigrants in exercise of the authority so conferred,

**21.** (1) Where the Governor General in Council has reason to believe that sufficient grounds exist for prohibiting emigration of skilled workers to any country, he may, by notification in the Gazette of India, declare that such emigration to that country shall cease to be lawful from a date specified in the notification; and from that date such emigration to that country shall accordingly cease to be lawful.

(2) Every notification issued under this section shall be laid before both Chambers of the Indian Legislature as soon as may be after it is made.

**22.** Nothing in this Chapter shall apply in any case in which a person engages another to accompany him out of India as his personal domestic servant.

## CHAPTER V.

### RULES.

**23.** Subject to the control of the Governor General in Council, the Local Government may, by notification in the local official Gazette, make rules consistent with this Act to prescribe the person by whom any doubt or dispute referred to in sub-section (2) of section 2 shall be determined and the procedure to be followed and the proof to be required in such cases, and to provide for any other matter which the Local Government is by this Act empowered to prescribe.

**24.** (1) The Governor General in Council may, by notification in the Gazette of India, and after previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the powers and duties of the several officers appointed by the Governor General in Council under this Act;
- (b) the licensing, supervision and control of all persons employed in British India in connection with the inducement of persons to emigrate and with the conveyance and accommodation of persons so induced;
- (c) the establishment, supervision and regulation of any places of accommodation provided for emigrants and for their medical care while resident there;
- (d) the forms to be maintained and the returns to be submitted by persons licensed in accordance with rules framed under clause (b);
- (e) the information to be furnished by persons licensed in accordance with rules framed under clause (b) to emigrants and the language in which such information is to be furnished;
- (f) the production and examination of emigrants before District Magistrates or such other authorities as may be appointed in this behalf;
- (g) the age below which persons of either sex may not emigrate except as dependents;
- (h) the accommodation, the provisions, fuel and other necessities, the medical stores and staff, the life-saving and sanitary arrangements, and the records to be maintained on any ship specially chartered for the transport of emigrants;
- (i) the reception and the despatch to their homes of return emigrants;
- (j) the fees, if any, payable by Emigration Agents to Protectors of Emigrants for each emigrant departing from India; and
- (k) generally, the security, well-being and protection of emigrants both up to the date of their actual departure from India and on their return to India.

## CHAPTER VI.

### OFFENCES.

**25.** (1) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act, emigrates or attempts to emigrate shall be punishable with fine which may extend to fifty rupees.

(2) Whoever, except in conformity with the provisions of this Act or of the rules made under this Act,—

- (a) makes, or attempts to make, any agreement with any person purporting to bind that person, or any other person, to emigrate, or
- (b) induces or attempts to induce, any person to emigrate or to attempt to emigrate or to leave any place for the purpose of emigrating, or
- (c) causes any person engaged or assisted by him, after grant of the permission referred to in section 17, to depart by sea out of British India without registration of the particulars required by sub-section (2) of section 18,

shall be punishable with fine, which may extend to five hundred rupees.

(5) If any person commits an offence under this section, any police-officer may arrest him without warrant.

**26.** Whoever, by means of intoxication, coercion or fraud, causes or fraudulently induces, or attempts to induce, any person to emigrate, or enter into any agreement to emigrate, or leave any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

**27.** Whoever falsely represents that any emigrants are required by the Government or are to be engaged on behalf of the Government shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to five hundred rupees, or with both.

**28.** No prosecution shall be instituted for any offence under this Chapter except with the sanction of a Protector of Emigrants or of a person appointed under section 5 and empowered in this behalf or, where there is no Protector or person so appointed and empowered, of the District Magistrate:

*Provided that no sanction shall be required when an offence has been committed in respect of an emigrant or an intended emigrant and the complaint is filed by such emigrant, or intended emigrant, or on behalf of such emigrant or intended emigrant, by the father, mother, husband, wife or guardian of such emigrant or intended emigrant, or, if such emigrant or intended emigrant is a member of a joint Hindu family, by the manager of that family.*

**29.** All the powers for the time being conferred by law on officers of Power for Customs-officer to search and detain for purposes of Act. sea-customs with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof, may be exercised by those officers for the prevention of offences against this Act,

## CHAPTER VII.

## SUPPLEMENTAL.

**30. (1)** The departure by land out of British India of any person under, or with a view to entering into, an agreement to work for hire, or when assisted, *otherwise than by a relative,* so to depart for the purpose or with the intention of working for hire or engaging in agriculture, in any country beyond the sea, is prohibited.

(2) Whoever departs, or attempts to depart, by land out of British India in contravention of this section, shall be deemed to have committed an offence under *sub-section (1) of section 25.*

(3) Whoever induces, or attempts to induce, any person to depart by land out of British India in contravention of this section shall be deemed to have committed an offence under *sub-section (2) of section 25.*

## CHAPTER VIII.

## SAVINGS AND REPEAL.

**31.** Nothing in this Act shall be deemed to apply to the departure out of British India of—

(i) any person who is neither of Indian parentage nor a subject of a State in India, or

(ii) any person enrolled under the Indian Army Act, 1911. VIII of 1911.

**32.** Notwithstanding anything contained in this Act, the provisions of this Act shall not apply for a period of twelve months from the date of the commencement of this Act to persons emigrating to Ceylon, the Straits Settlements, or any protected Native State adjoining the Straits Settlements.

**33.** The Indian Emigration Act, 1908, is hereby repealed. XVII of 1908.

H. MONCRIEFF SMITH,  
Secretary to the Government of India.





## GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

The following Report of the Joint Committee on the Bill to consolidate and amend the law relating to Income-tax and Super-tax was presented to the Legislative Assembly on the 18th January, 1922 :—

Paper No. I.—From K. M. Purkayastha, Esq., M.A., Secretary, Indian Mining Federation, to the Secretary to the Government of India, Finance Department, No. 1681-9-11, dated Calcutta, the 28th September, 1921.

From the Honorary Secretary, Narayanganj Chamber of Commerce, to the Hon'ble Mr. H. Monierieff Smith, C.I.E., Secretary to the Government of India, Legislative Department, dated the 7th November, 1921.

From the President, the Bengal National Chamber of Commerce, to the Secretary to the Government of India, Legislative Department, No. 347, dated Calcutta, the 16th November, 1921.

From W. Booth-Gravely, Esq., I.C.S., Revenue Secretary to the Government of Burma to the Secretary to the Government of India, Finance Department, No. 857-4-1-64, dated Rangoon, the 30th September, 1921, and enclosure.

From Babu Ujagar Singh Bedi, M.L.A., to G. G. Smith, Esq., M.L.A., No. T. II.-23—A., dated Lahore, the 7th November, 1921.

From Girdhari Lal, Esq., Banker and Municipal Commissioner, to the Secretary, Income-tax Bill Sub-Committee, Legislative Department, Government of India, dated Ludhiana, the 27th November, 1921.

From M. Jamal Mahomed Sahib, Esq., President of the Southern India Chamber of Commerce, to the Secretary to the Government of India, Legislative Department, No. 364, dated the 23rd November, 1921.

From C. M. Baker, Esq., C.I.E., I.C.S., M.L.C., Secretary to the Government of Bombay, Revenue Department, to the Secretary to the Government of India, Finance Department, No. C-860, dated the 16th November, 1921, and enclosures.

From the Secretary of the Chamber of Commerce, Bombay to the Secretary to the Government of India, Legislative Department, No. 2161-58, of 1921, dated the 2nd December, 1921.

From the Secretary of the Karachi Chamber of Commerce, to the Secretary to the Government of India, Legislative Department, No. 1-A, B-2, dated the 1st December, 1921.

From Messrs. Nagindas and Maneklal, Public Accountants and Auditors, Bombay, to the Honourable Mr. H. Monierieff Smith, Secretary to the Government of India, Legislative Department, dated the 19th November, 1921, and enclosure.

From the Honourable Mr. C. A. Barron, C.S.I., C.I.E., I.C.S., Chief Commissioner, Delhi, to the Secretary to the Government of India, Legislative Department, No. 7661-Financial, dated the 8th December, 1921.

From the Secretary of the United Provinces Chamber of Commerce, Cawnpore, to the Secretary, Legislative Assembly, No. 9671, dated the 2nd December, 1921.

From Major W. G. Neale, I.A., Secretary to the Honourable the Agent to the Governor General in Baluchistan, to the Secretary to the Government of India, Legislative Department, No. 6169-R., dated Quetta, the 1st December, 1921.

Paper No. II.—From Major O. T. C. Plowden, I.A., Secretary to the Chief Commissioner of Coorg, to the Secretary to the Government of India, Legislative Department, No. 4198-95-21, dated the 8th December, 1921.

From J. D. Sifton, Esq., C.I.E., I.C.S., Secretary to the Government of Bihar and Orissa, Finance Department, to the Secretary to the Government of India, Legislative Department, No. 4524-Com., dated the 8th December, 1921.

From the Secretary of the Chamber of Commerce, Madras, to the Secretary to the Government of India, Legislative Department, dated the 7th December 1921.

From B. T. Gibson, Esq., I.C.S., Financial Secretary to the Government of the Punjab, to the Secretary to the Government of India, Legislative Department, No. 81298-Budget, dated the 18th December, 1921, and enclosure.

We the undersigned members of the Joint Committee to which the Bill to consolidate and amend the law relating to income-tax and super-tax was referred have considered the papers noted in the margin and have now the honour to submit this our report with the Bill as amended by us annexed thereto.

From the Secretary of the Punjab Chamber of Commerce, to the Secretary to the Government of India, Legislative Department, No. 578, dated the 8th December, 1921.

From N. G. A. Edgley, Esq., I.C.S., Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, to the Secretary to the Government of India, Legislative Department, No. 6797-G., dated the 8th December, 1921.

Paper No. III.—From T. E. Moir, Esq., C.I.E., I.C.S., Acting Secretary to the Government of Madras, Finance (Separate Revenue) Department, to the Secretary to the Government of India, Legislative Department, No. 322, dated the 12th December, 1921, and enclosures.

From A. R. Edwards, Esq., I.C.S., Second Secretary to the Government of Assam, Finance Department, to the Secretary to the Government of India, Legislative Department, No. 8932-F., dated the 14th December, 1921, and enclosures.

From W. N. Choudry, Esq., to the Secretary to the Government of India, Legislative Department, dated the 15th December, 1921.

Paper No. IV.—From the Honourable Lieutenant-Colonel Sir Armine Dew, K.C.I.E., C.S.I., Agent to the Governor General in Baluchistan, to the Secretary to the Government of India, Foreign Department, No. 84-C.R., dated Camp Ziarat, the 5th September, 1921.

Paper No. V.—From the Honourable Sir John Loader Maffey, K.C.V.O., C.S.I., C.I.E., I.C.S., Chief Commissioner, North-West Frontier Province, to the Secretary to the Government of India, Legislative Department, No. 1949-F., (Rev.)-XVIII-A-48, dated Peshawar, the 20th December, 1921, and enclosures.

From E. A. H. Blunt, Esq., O.B.E., I.C.S., M.L.C., Secretary to the Government, Finance Department, United Provinces, to the Secretary to the Government of India, Legislative Department, No. C-5550, dated Allahabad, the 20th December, 1921 and enclosures.

From the Secretary of the Upper India Chamber of Commerce, Cawnpore, to the Secretary to the Government of India, Legislative Department, dated the 30th December, 1921, (through the Government of the United Provinces).

From Messrs. Nagindas and Maneklal, Public Accountants and Auditors, to the Honourable Mr. H. Moncrieff Smith, C.I.E., Secretary to the Government of India, Legislative Department, dated Bombay, the 15th December, 1921.

Paper No. VI.—From the Secretary, Burma Chamber of Commerce, to the Secretary to the Government of India, Legislative Department, dated the 21st December, 1921, and enclosure.

From the Honourable Mr. R. E. Holland, C.S.I., C.I.E., I.C.S., Chief Commissioner, Ajmer-Merwara, to the Secretary to the Government of India, Legislative Department, No. 29-C-687-VII, dated the 3rd January, 1922, and enclosures.

From the Secretary, Bengal Chamber of Commerce, to the Secretary to the Government of Bengal, Financial Department.

Paper No. VII.—From A. Marr, Esq., I.C.S., Secretary to the Government of Bengal, Finance Department, to the Secretary to the Government of India, Legislative Department, No. 18-S.B., dated the 3rd January, 1922, and enclosures.

From A. E. Mathias, Esq., I.C.S., M.L.C., Financial Secretary to Government, Separate Revenue Department, Central Provinces, to the Secretary to the Government of India, Legislative Department, No. 1-451—XI, dated the 3rd January, 1922, and enclosure.

Dr. Gour and Mr. Narain Dass Girdhar Dass were unable to attend the meetings of the Committee. Under the provisions of rule 41 of the Indian Legislative Rules we elected the Honourable Sir Alexander Murray, Kt., C.B.E., to act as Chairman.

*Clause 1 (2).*—We have amended the extent clause of the Bill by the addition of the words "British Baluchistan and", as we agree with the recommendation of the all-India Income-tax Committee that the provisions of the Bill should be extended in full to British Baluchistan.

*Clause 2 (1).*—We have amended the provisions of this sub-clause in order to make it clear that rent or revenue derived from land used for agricultural purposes is exempt from Income-tax only in cases where the land is assessed to land revenue by an authority in British India or subject to a local rate assessed and collected by an authority in British India, and that the exemption does not apply to cases where the land pays revenue or local rate to authorities outside British India. We have amended sub-clause (b) of this clause also in order to make it clear that the limitation in clause (a) applies also to the incomes specified in clause (b), so that income derived from agriculture will only be exempt if the agriculture is in respect of land on which land revenue or local rate is paid to an authority in British India. We have omitted from this definition the words 'but does not include income derived from forestry'.

We have considered the suggestion of the Bengal Chamber of Commerce that the tea industry should not be taxed unless and until agricultural income generally is brought under taxation but we cannot recommend any change in the present position. We recognise the difficulties involved in the separation of industrial from purely agricultural profits, but we think it must be left to the revenue authorities to discover a suitable formula.

A suggestion has been made that income from rent or revenue derived from land which is used for agriculture should no longer be exempt from income-tax, but we consider that this is not a matter that should be dealt with by this Committee.

*Clause 2 (2).*—We consider that the charging section (section 3 of the Act) should definitely lay down who the persons and associations are who are liable to income-tax and that this information should not have to be extracted from a perusal of the charging section read with this definition. We have amended the Bill accordingly.

*Clause 2(3) [now clause 2(7)].*—We have considered various objections raised regarding the nomenclature proposed for the income-tax authorities but consider that the designations proposed are suitable except in the case of "assessor". The use of this word is likely to lead to some confusion and we would replace it by the designation "Income-tax Officer".

*Clause 2(8).*—Of the Bill containing a definition of 'local authority' we have omitted as unnecessary.

*Clause 2(9).*—We have inserted a new definition in order to make it clear that the word "person" where used, *e.g.*, in clause 22(2) of the Bill includes a Hindu undivided family.

*Clause 2(14).*—We have considered at length the objections raised to the proposal contained in the Bill to abolish the distinction between registered and unregistered firms by assessing the profits of all partnerships or firms at the highest rate, the assessor being left in each case to determine from the papers and accounts produced whether a firm or partnership exists or not. We have come to the conclusion that the proposal would create very great hardship and give rise to numerous complaints if income-tax were levied at the maximum rate on the profits of small firms or partnerships and while we recognise the merits of the proposal made under the Bill we think that these are outweighed by the hardship that would be inflicted on the smaller assesses. We have therefore replaced in the Bill the distinction in the present Act between a registered and unregistered firm, income-tax on the registered firm to be levied at the maximum rate and the tax on the unregistered firm to be levied on a graded scale according to the amount of income.

We have however returned to the original definition of a registered firm contained in the Act of 1918, *viz.*, a firm constituted under a registered instrument of partnership specifying the individual shares of the partners. The amended definition of a registered firm which was introduced by section 2 of Act XVII of 1920 as being a firm registered with the Collector in the prescribed manner has not been taken advantage of to any great extent, and while different rules have been made in different provinces prescribing how a firm may be registered, in actual practice the old system has largely been retained of requiring a registered instrument of partnership.

*New clause 2 (18).*—We have introduced a definition of the expression 'public servant' in order to make it clear that this phrase as used in clause 53 (now clause 54) of the Bill includes all income-tax employes and is not restricted to the particular authorities mentioned in clause 5 (1). For the same reason we have made consequential changes in clause 5, in particular omitting sub-clause (6) of that clause.

*Clause 3.*—We agree to the proposal contained in the Bill to abolish the adjustment system on the condition, which is provided for in clause 68 of the Bill, that the assessments made in the current year shall be adjusted. This course we consider preferable to the proposal made by one Chamber of Commerce that the assessments of the current year should be adjusted against the income of the year 1917-18 which escaped taxation owing to the introduction of the existing system. This latter course we consider to be impracticable.

There is however one point regarding the change of system which involves a slight alteration in the Bill. We consider that the Act of 1886, while basing the tax on the income of the preceding year, did not introduce a system of assessing and collecting the tax on the income of the preceding year in arrear but introduced a tax on current income providing at the same time, for purposes of convenience, that in the case of income derived from a business or profession the profits of the preceding year were to be taken as the statutory income of the current year. It was for this reason that the Act of 1886 contained a clause providing for the adjustment of an assessment on the previous year's income to an assessment on the current year's income in the case of trades and businesses where owing to the death or insolvency of the assessee, or owing to any other specific cause, the assessee was deprived of, or lost the income on which the assessment was made. The point is however a purely academic one except in the case of businesses which have been taxed under the existing Act. The abolition of the adjustment system means that in the case of those particular businesses tax will have to be paid on the profits of one year more than under the old system. We consider that the case of these businesses should be specially provided for and we have therefore amended clause 26 (now clause 25 of the Bill) by limiting the provisions of sub-clause (1) of that clause to businesses, professions or vocations which will be taxed for the first time under the provisions of the Bill and introducing a new sub-clause (3) providing for an adjustment in the case of businesses, professions or vocations which have been taxed under the present Act in the year in which they close down.

We have considered the suggestion that a distinction should be drawn between business or professional profits and fixed receipts such as salaries and interest on securities by taxing income from the former source on the basis of the income of the preceding year and income from the latter source on the basis of the income of the current year. We are satisfied that very little difficulty is likely to be experienced in connection with the system proposed in the Bill

and that considerable confusion would be created if, for income-tax purposes, a part of a man's income was taken to be the current year's income and another part to be the income of another year. We therefore make no change.

Income-tax will already have been deducted in the current year from salaries and interest on securities at the time of payment and while the change of system has the result of making persons drawing income from these sources technically liable in 1922-23 to pay the tax again on the income from these sources in 1921-22, we consider that this can be avoided by the issue of departmental instruction.

*Clause 4 (2).*—We agree with the criticisms brought against the provisions of this clause that it goes much further than the object aimed at in the Statement of Objects and Reasons, and, in particular, that it makes no distinction between capital and income. We have, therefore, amended the sub-clause in order to restrict its application to the case of business profits or gains which are received or brought into British India within three years of the year in which they arose or accrued in a place outside British India to a person resident in British India when they arose or accrued.

*Clause 4 (3).*—Some misapprehensions have been aroused by the omission of section 8 (2) (vii) of the present Act, *viz.*, 'legacies'. Lump sum legacies are, however, clearly exempt under clause (vii) of this sub-clause. We have considered the question of whether the Bill makes it perfectly clear that in the case of all trusts there will not be double taxation, that is once in the hands of the trustee and once in the hands of beneficiary. We are satisfied that clauses 40 and 41 of the Bill, which provide for the trustee in particular cases being liable for the tax in place of the beneficiary make it clear that it is only in such cases that a trustee can be required to pay the tax.

We agree with the proposal in the Bill to omit sub-clause (ix) of section 8 (2) of the present Act (*viz.*, 'any perquisite or benefit which is neither money nor reasonably capable of being converted into money'), in order to avoid inequalities in assessments due to the existence of this provision in the present Act. We consider, however, that departmental instructions should be issued that in the case of rent-free houses the annual value of such houses to the occupier should in no case be deemed to be more than 10 per cent. of the salary in the case of salaried persons.

*Clause 5.*—We agree with the views of the All-India Committee that, since the making of rules under the Act, the interpretation of such rules, and the general administration of the Act will be in the hands of the Government of India, it is necessary that the Government of India should establish an authority for the purpose of discharging these functions. Clause 64 of the original Bill, however, merely provided that the Governor General in Council might delegate all or any of his powers under the Bill to such authority as he might specify in a notification, and we consider that the constitution of the authority to exercise these powers should be definitely provided for in the Bill which should also specify the particular powers that are to be vested in that authority. We have considered various proposals regarding the name to be given to this authority, and have come to the conclusion that the most suitable name is the Board of Inland Revenue. This, however, does not mean that the authority must consist of more persons than one and we have therefore provided that the Board shall consist of one or more persons appointed by the Governor General in Council, while throughout the Bill we have distinguished in various clauses between the powers that we consider should be reserved by the Governor General in Council and those that should be vested by statute in the Board of Inland Revenue.

A complete whole-time staff for income-tax work has not yet been appointed in many of the provinces and it is necessary to provide, until such whole-time staff is engaged, for the continuance of the existing system under which various officers exercise the powers of an assessing authority in respect of particular classes of income and of an appellate authority in respect of others. This we have provided for in sub-clause (4) of this clause.

As regards the control of Local Governments, we agree to the proposals contained in a draft letter under which the appointment of Assistant Commissioners and Income-tax Officers will be subject to the approval of the Local Governments, and any such officers dismissed by the Income-tax Commissioner will have a right of appeal to the Local Government.

*Clause 8.*—We have inserted a proviso in order to cover the peculiar case of securities issued by a local Government income-tax free. The income-tax on such securities is payable by the local Government itself.

We recommend that executive instructions should be issued that where an assessee with an income from securities has obtained a loan from a bank for purchasing those securities, he may on obtaining a banker's certificate as to the amount of the interest on his loan set off the interest that he pays against the interest that he earns from the securities.

*Clause 9.*—In order to remove misapprehensions caused by the insertion of the words "or lands" in this clause, we have restricted the meaning of these words to lands attached to buildings. The income derived from vacant lands let out in urban areas for the purpose of storing materials, etc., will under the provisions of the Bill be liable to tax under clause 12.

We have inserted a proviso to sub-clause (1) to secure that the aggregate of the allowances made under that sub-clause shall in no case exceed the annual value. This is necessary owing to the new provision in clause 24 allowing a set off of loss under one head against profits under another.

In the proviso to sub-clause (2) we have replaced the word "aggregate" by the word "total" in order to make it clear that it is only the income of the recipient liable to taxation under the Bill that is to be taken into account and not his income from non-taxable sources.

We agree that no deduction on account of municipal or local taxes should be allowed in this clause. We are unable to accept the suggestion that the maxima to be allowed under sub-clause (vi) and the allowance for vacancies under sub-clause (vii) should be prescribed in the Bill.

*Clause 10.*—We are opposed to the proposal that losses in business should be carried forward and set against profits of succeeding years.

We agree with the All-India Income-tax Committee that it is not advisable to insert any provision in the Bill allowing bad debts as a business deduction, since 'bad debts' occur only where the mercantile system of accounting is adopted. Departmental instructions should, however, be issued to provide for an allowance being given for bad debts when they are consistent with the system of accounts adopted by the assessee.

We are unable to accept the proposal that amounts transferred to a reserve intended for the purposes of internal insurance should be allowed as a business expense.

We do not consider it advisable to insert any provision in the Bill allowing as a business deduction insurance against the loss of profit. Departmental instructions should, however, be issued that where the owner of a business asks for any such allowance, it should be given on the assessee agreeing to pay income-tax on the amount recovered from the insurance company. Similar instructions should be issued regarding insurance against loss of rent under clause 9.

We are opposed to the proposal that the rates of depreciation fixed under this clause should vary in different parts of India according to local conditions.

In sub-clauses (2) (v) and 2 (vi) we have inserted the word 'furniture,' as we consider that the repair and depreciation of furniture are a legitimate business expense. As regards depreciation, however, departmental instructions should be issued that the depreciation allowance should be granted only in cases in which it is asked for, in which case the cost of replacement should not be allowed, and that where this depreciation allowance is not asked for, the cost of replacement should be allowed.

In sub-clauses (2) (vi) (c) and (2) (vii) we have made provision for the depreciation allowances granted under the Act of 1886.

We are unable to agree to the proposal that depreciation allowances should be further extended so as to provide for the amortisation of capital sums paid on account of the purchase, for example, of the lease of a mine or for the depreciation of wasting assets, such as coal. We consider, however, that depreciation might be allowed for sinking shafts, tramways, and sidings, but no specific provision is required in the Bill as it appears to be covered by the word 'plant'.

We have further amended the provisions of sub-clause (2) (vii) in order to make it clear that the allowance to be granted under this sub-clause is a pure obsolescence allowance and is not to be granted where machinery or plant is sold for reasons other than obsolescence.

We are unable to accept the suggestion that taxes paid to municipal or other local authorities, other than the taxes levied in respect of the premises used for the purposes of the business, should be allowed as a business expense.

We do not consider it advisable to make any specific provision regarding the deductions to be allowed on account of the contributions of employers to private provident funds of companies and firms. We consider, however, that the practice should be that such contributions should be allowed in cases where the funds are irrevocable trusts and where the employers' contributions cannot under any circumstances be recovered by the employers.

*Clause 13*—Questions have been propounded in connection with this clause as to what the 'method of accounting regularly employed by the assessee' will be considered to be in cases where the various branches of a business are only closed down once in three or five years or where it is the custom amongst certain merchants to prepare their accounts on the basis of the mercantile accountancy system in respect of transactions between themselves and members of their own community and on the basis of cash payments in the case of transactions between themselves and their customers. It is impossible to provide in the Bill for all the different classes of cases. As regards the two particular cases quoted, we are of opinion that, on the facts as stated to us, in the former case a business might be assessed either on the average profits of the branches as disclosed from the accounts last filed or on the actual profits brought to account owing to particular branches closing down in particular years, and that in the latter case the accounts system might be considered to be "the method regularly employed," provided that the same system is continuously employed.

We have considered the proposals for the insertion of a definite provision in this clause that where an assessee changes his system of accounting, the Income-tax Officer should have power to secure that no profits escape taxation on account of the change, and that it should be definitely laid down that the assessee may change his system of accounting with the permission of the Income-tax Officer subject to such conditions as the Income-tax Officer may prescribe, in which latter case an appeal should be allowed against his order to the Assistant Commissioner. We consider that both these suggestions are fully covered by the proviso to this clause which enables the Income-tax Officer to reject the new system in the year of change if in his opinion the income, profits and gains to be taxed in the year of change cannot be correctly deduced therefrom and that clause 30 clearly provides for the decision of the Income-tax Officer being contested in an appeal against the assessment itself.

*Clause 14.*—We have amended this clause in order to make it clear that the income which an individual member of a Hindu undivided family derives from the undivided family shall not be taken into account in the assessment of that individual to super-tax. We have also restored the provisions of the present Act which prescribe that an individual is not liable to pay tax on income that he derives from a company or firm only in cases where the profits of the company or firm have themselves been assessed to income-tax. This is necessary in order to provide for cases where dividends are drawn from a non-Indian company.

We have further amended the provisions of sub-clause (c) [now sub-clause (2) (b)] of clause 14 in order to make it clear that where a partnership deed provides that the partners may not remove more than a certain proportion of the profits in any year, or that a certain proportion of the profits must be distributed in charity, the amount to be taken into consideration in fixing the total income of a partner both for purposes of super-tax and for the purpose of determining the rate at which he is to be assessed on his other income shall be his proportionate share of the whole of the assessable profits of the firm.

*Clause 15.*—We have amended this clause for the purpose of securing that in the case of a Hindu undivided family the premia paid for insurance on the life of other members than the head of the family shall be allowed.

*Clause 17.*—We have omitted clause 17 of the original Bill which provided that income-tax is to be charged at the maximum rate in the case of companies and firms, as we consider that this provision can more suitably be inserted in the Finance Act. We have received various suggestions for an alteration of the system of graduation of income-tax, but this again is a question which we consider should be brought up in connection with the Finance Bill and not with this Bill.

*Clause 19 (now clause 18).*—We have amended sub-clause (2) in order to provide that deductions from salary shall approximate as closely as possible to the appropriate rate; the provision in the present Act and the original Bill that where a sum received is a non-recurring item it should be taxed at the rate appropriate to that particular sum as if it were the whole of the assessee's income having given rise to a considerable amount of unnecessary trouble to assesses. We have also altered the proviso to this sub-clause in order to make it clear that excess collections in previous deductions may be corrected in subsequent deductions.

As regards sub-clause (3) we have considered the complaints that have been made about the hardship involved to assesses having an income derived from securities owing to the interest on such securities being taxed at the maximum rate at the source. Many of the difficulties in connection with refunds will be removed by the provisions in the Bill requiring a certificate to be given by the person deducting income-tax from interest on securities that income-tax has been deducted, and the proposal that the rules regarding refunds should provide that an assessee may get a refund in the district in which he is assessed or in the district in which he resides and should not be required to obtain a refund in the district in which the tax was originally deducted, and that the certificate should be taken as conclusive evidence of the payment of the tax. We think, however, that in addition to this departmental instructions should be issued that in cases where the Income-tax Officer is satisfied that a person has no income other than income from Government securities, he may issue a certificate authorising the deduction to be made at the rate appropriate to such person's total income from those securities, and in cases where the Income-tax Officer is satisfied that the holder of Government securities has no taxable income, a certificate might be issued to that effect, so that the officer paying the interest on the securities should deduct no tax at the source. Such certificates, we consider, should remain in force until they are cancelled, and should not be required to be renewed annually.

We have considered the suggestion that in sub-clause (7) a provision should be inserted making it clear that an employer who has accidentally not deducted the full amount of tax from an employe's salary has a right to recover from the employe any amount that he has to pay on account of such short deduction. No such provision appears to be necessary, as every person who pays money on account of another has a right of recovery.

We have discussed at length the arguments for and against the provisions in the Bill making it obligatory on all employers to deduct income-tax from their employes' salary under this sub-clause and to make a return under clause 22 (now clause 21) of their employes and their salaries, and have agreed by a majority that the clauses as drafted should be retained.



*Clause 20 (now clause 19).*—We have amended this clause in order to provide for income-tax being paid direct by the assessee in cases where the employer or the person paying the interest on securities does not reside in British India and in cases where owing to the assessee's salary being less than Rs 2,000 income-tax has not been deducted.

*Clause 21 (now clause 20).*—We have omitted the provision requiring the principal officer to state in the certificate to be issued under this clause the amount of the tax paid or to be paid and the rate at which it has been or is to be paid, since in numerous cases it will be impossible to say what rate of tax has been or will be levied on the profits out of which the dividends are paid. We consider that it should be assumed in connection with such certificates that the tax has been levied at the rate current on the date on which the dividends were declared, and this we have provided for by an amendment of clause 47 (1) [now clause 48 (1)] of the Bill.

*Clause 22 (now clause 21).*—We consider that the period of 15 days prescribed in this clause is too short and would extend it to 30 days.

Difficulties have been experienced in connection with the provision that the principal officer of a company must furnish a return even in cases where a company conducts business at different centres and where a return is required by the local Income-tax Officer. We have amended the clause in order to provide for persons other than the principal officer being required to make a return to suit the convenience of the company.

*Clause 23 (now clause 22).*—The suggestions that the form to be prescribed should enable an assessee to show a loss if a loss has been incurred, and that the declaration to be signed by the assessee should be altered to conform with the new phraseology in the Bill [*viz.*, "income, profits and gains of every kind and from every source to which the Act applies"] have our approval, and are recommended for adoption in framing the form under the rule-making power. We have provided that the period under sub-clause (2) shall not be less than thirty days.

We have inserted a new sub-clause (3) providing that where a person has not furnished a return in due time or having furnished a return discovers any omission or wrong statement therein, he may furnish a return or revised return before the assessment is made, so that where such a return or revised return has been made, the assessee may not be prosecuted for failing to submit the original return and may not be penalised for making a wrong statement in the original return.

We have also inserted a proviso to sub-clause (3) [now sub-clause (4)] preventing the Income-tax Officer from calling upon an assessee to produce books of account going back for a period of more than three years prior to the accounting period. We agree, however, that no such limitation can be placed upon the power to call for documents.

*Clause 24 (now clause 23).*—We do not accept the suggestion made that a copy of the order of assessment under this clause must in all cases be given to the assessee. We agree with the All-India Income-tax Committee that it is sufficient that departmental instructions should be issued that any assessee who desires may have a copy of the order free of charge.

*Clause 25 (now clause 24).*—We have inserted at the end the words 'in that year' for the purpose of clearness.

We have inserted a new sub-clause (2) in order to allow partners in a registered firm to get off their share of the loss incurred by the firm against their income from other sources.

*Clause 26 (now clause 25).*—The more important changes in this clause have already been explained under clause 3. We have further amended sub-clause (1) in order to make it clear that the income to be taxed is the income accruing between the end of the last year of which the profits have been taxed and the date of discontinuance of the business.

We have retained the provisions of sub-clause (2) with the modification that a person should be required *not* to give a notice before he discontinues but to give notice within fifteen days after the discontinuance. We have also replaced the words 'not exceeding' by the words 'equivalent to', as we consider that a maximum and not a fixed penalty should be provided for.

Doubts have been expressed as to whether it is clear that the rate to be applied in taxing a discontinued business under sub-clause (1) is the rate in force in the year in which the assessment is made. We consider that this is sufficiently clear in the clause as drafted.

*Clause 27 (now clause 26).*—We have made some drafting changes in this clause, and we consider that the clause as now drafted meets the doubts expressed as to whether it covers the case of a company succeeding another company, since the word 'person' under the definition in the General Clauses Act includes a company.

*Clause 29 (now clause 27).*—We have altered the words "may cancel" to the words "shall cancel," as we consider it should be obligatory on the Income-tax Officer to make a fresh assessment under such circumstances.

*Clause 30.*—We have replaced the phraseology "petition against assessment" by the word "appeal" as being more suitable. We have added to the particular orders against which an appeal may lie by including orders imposing a penalty under clause 24

(now clause 25) clause 38 (now clause 28) and against orders of an Income-tax Officer refusing to re-open a case under clause 29 (now clause 27).

In sub-clause (3) we have omitted the provision making it obligatory for a copy of the order in all cases to be filed with the appeal.

*Clause 31.*—We have amended this clause in order to make it clear that the Assistant Commissioner has power to remand a case to the Assessor for report or disposal on its merits and that the appellate authority is not required to pass orders on the actual date of hearing. We have also added a proviso that an Assistant Commissioner may not pass an order of enhancement unless the appellant has had an opportunity of showing cause against such enhancement.

*New clause 32.*—In this new clause we have provided for an appeal lying to the Commissioner against the order of an Assistant Commissioner imposing a penalty for concealment of income under clause 28 or against an order enhancing an assessment in the course of an appeal under clause 31.

*Clause 32 (now clause 33).*—We have amended this clause in order to give the Commissioner the power of review over any proceedings taken by subordinate officers under the Bill. We do not consider that his power should be limited as at present to assessment proceedings. We have also made amendments to make it clear that the Commissioner need not necessarily in each case make a personal enquiry, but may cause an enquiry to be made by a subordinate officer.

A majority of us are not in favour of the proposal that the Commissioner in exercising his power of review should be assisted by two non-official Assessors.

*Clause 33 (now clause 28).*—We have amended the clause in order to provide that the Commissioner shall have these powers. We have substituted the words "not exceeding" for the words "equal to" as we consider that the penalty to be prescribed should be a maximum and not a fixed one.

*Clause 34.*—The majority of us are of opinion that the period of three years prescribed in this clause should be reduced to one year, the same reduction being made in the period prescribed in clauses 35 and 49 (now clause 50).

We have made further drafting changes in the Bill in order to make it clear that the provisions of this clause read with clause 68 enable the Income-tax authorities in the year 1922-23 to make an adjustment in the case of persons who were not assessed in the year 1921-22 or were declared provisionally not liable.

We have added a proviso so that there may be no doubt that the rate applicable to assessments or re-assessments made under this clause shall be the rate in force at the time when the income should have been assessed.

*Clause 37.*—We have amended the clause in order that the Commissioner may have these powers.

*Clause 36.*—We have amended sub-clause (1) in order to enable the income-tax authorities to require the members of a Hindu undivided family to give the name of the manager. We have omitted sub-clause (3) as unnecessary since the income-tax authorities have ample powers to disallow any payments shown in the accounts of an assessee where proof of the payment is not made.

*Clause 39.*—This clause is amended in order to provide that register of bond-holders and mortgage registers shall be open to inspection as well as the register of shareholders.

The question has been raised as to whether an income-tax authority inspecting registers under this clause can be required to pay a fee under the provisions of the Companies' Act. We are advised that as the provisions of this clause confer specific powers on income-tax authorities they cannot be called upon to pay a fee under the Companies' Act.

*Clause 42.*—We agree with the All-India Income-tax Committee that it is not possible to make any suitable definition of the phrases "business connection" or "agent", but a special effort should be made to make the working of this clause uniform throughout India and to define the policy to be followed either by rules or executive instructions.

We omit from sub-clause (2) of this clause the words 'or from the interest on any securities of the kind mentioned in section 8', and also the words 'or where there are more agents than one, in the name of such agent as the Commissioner shall determine'. We think that these provisions would give rise to more inconvenience than on the facts before us would be justified by the possible increase in receipts.

*Clause 43.*—We have inserted the words "or from whom such non-resident is in receipt of any income" in order to remove doubts that have arisen in particular cases of whether a business connection exists or not. We are not prepared to accept the proposal that the words "having any business connection with such person" should be amended in order to make it possible to treat as an agent a person who had a business connection with the non-resident at a period prior to the service of the notice.

*New clause 44*—We have inserted this clause in order to make it clear that where a business or profession or vocation carried on by a firm is entirely discontinued the persons who are the members of the firm on the date of such discontinuance shall be liable to any tax due from the firm.

*Clause 44 (now clause 45)*.—We have substituted the words "following the date of the service of the notice or order" for the words "following the date of the notice or order."

*Clause 48 (now clause 49)*.—This clause makes provision for relief in respect of double income-tax where income-tax is levied by the income-tax authorities of the United Kingdom and of India upon the same income. We recommend that the Government of India should take up the question of making suitable arrangements with the Indian States and with the Straits Settlements for relief from double income-tax.

*Clause 49 (now clause 50)*.—As the words "the year to which the claim relates" are vague, we have replaced them by the words "the year in which the tax was recovered."

*Clause 53 (now clause 54)*.—We have amplified sub-clause (1) in order to make proceedings for the recovery, as well as the assessment, of the tax confidential. We have added a proviso (c) to sub-clause (2) in order to extend the protection given by the proviso to any action of a public servant in pursuance of the provisions of the Bill or the rules made thereunder, such as the service of a notice by affixture.

*Clause 54 (now clause 55)*.—We have considered the objections raised to the provisions of the present Act and the Bill relating to the super-tax on companies which result in portions of the profits of holding companies being taxed more than once. We are of opinion that the provisions of the Bill and the present Act should be retained but that if the rate of this tax is to be enhanced in future the Government of India should consider whether the whole basis of the method of assessment does not require revision.

*Clause 56 (now clause 57)*.—As sub-clause (1) seems to go further than the intention expressed in the Statement of Objects and Reasons, we have added the words "in respect of such share" in order to make it clear that the resident partner is only liable for super-tax on the share as if it were the whole income of the non-resident.

We have amplified sub-clause (2) in order to make it clear that the principal officer has power to deduct the amount of the super-tax from the amount payable by the company to the assessee. We have also restricted the application of sub-clause (2) to cases where the principal officer is aware that the shareholder is non-resident. We are not prepared to accept the suggestion that sub-clause (2) should be amplified in order to provide for deduction at the source of super-tax on any sum which a non-resident may receive from a company by way of interest on debentures or remuneration such as Directors' fees.

*Clause 58 (now clause 59)*.—We consider that the rules to be framed under the Bill should be made "after previous publication". We agree that this should not apply to the first set of rules made under the Bill but such set of rules should be shown for criticism to the members of this Committee before they are published.

*Clause 59 (now clause 60)*.—We have considered the question raised in the letters of certain Chambers of Commerce regarding the equity of the levy of super-tax on the profits of feeder railway companies, but we consider that this is not a matter that can be dealt with in connection with this Bill.

*Clause 61 (now clause 62)*.—We have amended this clause by omitting the reference to the Collector and the Assessor as collections are not in all (or even in many) cases made by these particular officers.

*Clause 62 (now clause 63)*.—We have added a sub-clause (2) in order to make it clear upon whom a notice or requisition may be served in the case of firms and Hindu undivided families.

*Clause 63 (now clause 64)*.—The amendments in sub-clauses (1) and (2) are for the purposes of making it clear that these clauses merely prescribe the particular Income-tax Officers who are to make the assessments and do not prescribe the locality in which assessments must be made. We have added the proviso to sub-clause (3) in order to secure that an assessee shall have had an opportunity of expressing his view before a decision is arrived at in cases of dispute.

*Clause 66*.—We have omitted sub-clause (7) of the original Bill which defines the meaning of the words "a question of the law" as being unduly restrictive. We have added a proviso to sub-clause (2) in order to enable an applicant to withdraw his application for reference to a High Court in cases where the Commissioner is himself prepared to give a ruling in his favour on the point of law raised.

In sub-clause (6) [now sub-clause (7)] we have omitted the words "if any". We have further made provision in new sub-clause (3) that an assessee shall have power to apply to a High Court for a mandamus requiring the Commissioner to state a case in cases where the Commissioner declines to state a case.

*Clause 68*.—We have amended the second proviso in order to make it clear that the latter portion merely means that the procedure to be adopted in connection with an adjustment is the same as the procedure prescribed by the Bill for an assessment and that it does not

mean that the rate to be charged in connection with the adjustment is the same as the rate of income-tax prescribed for the year in which the adjustment is made.

2. We have made certain other drafting amendments in the Bill which do not call for detailed notice.

3. The Bill was published as follows :—

<i>Gazette.</i>	<i>In English.</i>	<i>Date.</i>
Gazette of India . . . . .		24th September, 1921.
Fort Saint George Gazette . . . . .		4th October, 1921.
Bombay Government Gazette . . . . .		
Calcutta Gazette . . . . .		26th October, 1921.
United Provinces Gazette . . . . .		8th October, 1921.
Punjab Government Gazette . . . . .		7th October, 1921.
Burma Gazette . . . . .		
Central Provinces Gazette . . . . .		8th October, 1921.
Assam Gazette . . . . .		19th October, 1921.
Bihar and Orissa Gazette . . . . .		26th October, 1921.
Coorg District Gazette . . . . .		1st December 1921.
Sind Official Gazette . . . . .		
North-West Frontier Gazette . . . . .		4th November, 1921.

*In the Vernaculars.*

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras . . . . .	Tamil . . . . .	1st November, 1921.
	Telugu . . . . .	1st November, 1921.
	Hindustani . . . . .	15th November, 1921.
	Kanarese . . . . .	1st November, 1921.
	Malayalam . . . . .	8th November, 1921.

4. We think that the Bill has not been so altered as to require republication, and we recommend that it be passed as now amended.

5. The non-official members of the Committee wish to place on record their appreciation of the able manner in which the numerous opinions on the Bill were summarised and presented for consideration by Mr Sim, who thereby greatly facilitated the deliberations of the Committee.

ALEX. R. MURRAY.

LALUBHAI SAMALDAS.

A. H. FROOM.

ANNAMALAI CHETTIYAR.

P. P. GINWALA.

G. S. KHAPARDE.

N. C. SIRCAR.

ISWAR SARAN.

G. G. SIM.

P. C. SETHNA.

W. M. HAILEY.

H. MONCRIEFF SMITH.

G. M. BHURGRI.

MANMOHANDAS RAMJI.

*The 17th January, 1922.*

[AS AMENDED BY JOINT COMMITTEE.]

**(WORDS PRINTED IN ITALICS INDICATE AMENDMENTS SUGGESTED BY THE COMMITTEE.)***A bill to consolidate and amend the law relating to Income-tax and Super-tax.*

WHEREAS it is expedient to consolidate and amend the law relating to Income-tax and Super-tax; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Income-tax Act, 1922.  
Short title, extent and commencement.

(2) It extends to the whole of British India, including *British Baluchistan* and the Sonthal Parganas, and applies also, within the dominions of Princes and Chiefs in India in alliance with His Majesty, to British subjects in those dominions who are in the service of the Government of India or of a local authority established in the exercise of the powers of the Governor General in Council in that behalf, and to all other servants of His Majesty in those dominions.

(3) It shall come into force on the first day of April, 1922.

2. In this Act, unless there is anything repugnant in the subject or context,—

(1) "agricultural income" means—

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in *British India* or subject to a local rate assessed and collected by officers of Government as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, when he does not keep a shop or stall for the sale of such produce;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (i) and (ii) of clause (b) is carried on,

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver of the rent-in-kind by reason of his connection with the land, requires as a dwelling-house, or as a store-house, or other out-building;

(2) "assessee" means a person by whom income tax is payable;

(3) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Income-tax under section 5;

(4) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;

(5) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 5;

(6) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession, and includes any foreign association carrying on business in British India whether incorporated or not, and whether its principal place of business is situate in British India or not, which the *Board of Inland Revenue* may, by general or special order, declare to be a company for the purposes of this Act; VII of 1918.

(7) "Income-tax Officer" means a person appointed to be an *Income-tax Officer* under section 5;

(8) "Magistrate" means a Presidency Magistrate or a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Local Government to try offences against this Act;

(9) "person" includes a *Hindu undivided family*;

(10) "prescribed" means prescribed by rules made under this Act;

(11) "previous year" means—

(a) the twelve months ending on the 31st day of March next preceding the year for which the assessment is to be made, or, if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said 31st day of March, then at the option of the assessee the year ending on the day to which his accounts have so been made up;

Provided that, if this option has once been exercised by the assessee, it shall not again be exercised so as to vary the meaning of the expression "previous year" as then applicable to such assessee except with the consent of the *Income-tax Officer* and upon such conditions as he may think fit; or

(b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the *Board of Inland Revenue* or by such authority as the *Board* may authorise in this behalf;

(12) "principal officer," used with reference to a local authority or a company or any other public body or association, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(b) any person connected with the authority, company, body or association upon whom the *Income-tax Officer* has served a notice of his intention of treating him as the principal officer thereof;

XLV of 1860. (13) "public servant" has the same meaning as in the *Indian Penal Code*;

(14) "registered firm" means a firm constituted under a registered instrument of partnership specifying the individual shares of the partners;

(15) "total income" means total amount of income, profits and gains from all sources to which this Act applies computed in the manner laid down in section 16; and

(16) "unregistered firm" means a firm which is not a registered firm.

## CHAPTER I.

### CHARGE OF INCOME-TAX.

3. Where any Act of the Indian Legislature enacts that income-tax shall be charged for any year at any rate or rates applicable to the total income of an assessee, tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of all income, profits and gains of the previous year of every individual, company, firm and Hindu undivided family.

4. (1) Save as hereinafter provided, this Act shall apply to all income, profits or gains, as described or comprised in section 6, from whatever source derived, accruing, or arising, or received in British India, or deemed under the provisions of this Act to accrue, or arise, or to be received in British India.

(2) Profits and gains of a business accruing or arising without British India to a person resident in British India shall be deemed to be profits and gains of the year in which they are received or brought into British India, notwithstanding the fact that they did not so accrue or arise in that year, provided that they are so received or brought in within three years of the end of the year in which they accrued or arose.

(3) This Act shall not apply to the following classes of income:—

(i) Any income derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto,

(ii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.

(iii) The income of local authorities.

(iv) Interest on securities which are held by, or are the property of, any Provident Fund to which the *Provident Funds Act, 1897*, applies, or any Provident Insurance Society to which the *Provident Insurance Societies Act, 1912*, is, or, but for an exemption under that Act, would be, applicable.

(v) Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries, or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such Provident Fund.

(vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.

(vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employé.

(viii) Agricultural income.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.

## CHAPTER II.

### INCOME-TAX AUTHORITIES.

5. (1) There shall be the following classes of Income-tax authorities. Income-tax authorities for the purposes of this Act, namely:—

- (a) a Board of Inland Revenue,
- (b) Commissioners of Income-tax,
- (c) Assistant Commissioners of Income-tax, and
- (d) Income-tax Officers.

(2) The Board of Inland Revenue shall consist of one or more persons appointed by the Governor General in Council.

(3) There shall be a Commissioner of Income-tax for each province who shall be appointed by the Governor General in Council after consideration of any recommendation made by the Local Government in this behalf.

(4) Assistant Commissioners of Income-tax and Income-tax Officers shall, subject to the control of the Governor General in Council, be appointed by the Commissioner of Income-tax by order in writing. They shall perform their functions in respect of such classes of persons and such classes of income and in respect of such areas as the Commissioner of Income-tax may direct. The Commissioner may, by general or special order in writing, direct that the powers conferred

on the Income-tax Officer and the Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases, be exercised by the Assistant Commissioner and the Commissioner, respectively, and for the purposes of any case in respect of which such order applies references in this Act or in any rules made hereunder to the Income-tax Officer and the Assistant Commissioner shall be deemed to be references to the Assistant Commissioner and the Commissioner, respectively.

(5) The Board of Inland Revenue may, by notification in the Gazette of India, appoint Commissioners of Income-tax, Assistant Commissioners of Income-tax and Income-tax Officers to perform such functions in respect of such classes of persons or such classes of income, and for such area, as may be specified in the notification, and thereupon the functions so specified shall cease, within the specified area, to be performed, in respect of the specified classes of persons or classes of income, by the authorities appointed under sub-sections (3) and (4).

(6) Assistant Commissioners of Income-tax and Income-tax Officers appointed under sub-section (4) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax appointed under sub-section (3) for the province in which they perform their functions.

### CHAPTER III.

#### TAXABLE INCOME.

6. Save as otherwise provided by this Act, the following heads of income, profits and gains shall be chargeable to income-tax in the manner hereinafter appearing, namely :—

Heads of income chargeable to income-tax.

- (i) Salaries.
- (ii) Interest on securities.
- (iii) Property.
- (iv) Business.
- (v) Professional earnings.
- (vi) Other sources.

7. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer:

Provided that the tax shall not be payable in respect of any sum deducted under the authority of Government from the salary of any individual for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary.

(2) Any income which would be chargeable under this head if paid in British India shall be deemed to be so chargeable if paid to a British subject or any servant of His Majesty in any part of India by Government or by a local authority established by the Governor General in Council.

8. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government of India or of a Local Government, or on debentures or other securities for money issued by or on behalf of a local authority or a company:

Provided that no income-tax shall be payable on the interest receivable on any security of the Government of India issued or declared to be income-tax free:

Provided, further, that the income-tax payable on the interest receivable on any security of a Local Government issued income-tax free shall be payable by that Local Government.

9. (1) The tax shall be payable by an assessee under the head "Property" in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of his business, subject to the following allowances, namely :—

- (i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value;
- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction;
- (iv) where the property is subject to a mortgage or charge or to a ground rent, the amount of any interest on such mortgage or charge or of any such ground rent;
- (v) any sums paid on account of land-revenue in respect of the property;
- (vi) in respect of collection charges, a sum not exceeding the prescribed maximum;
- (vii) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case;

Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

(2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year:

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent. of the total income of the owner.

10. (1) The tax shall be payable by an assessee under the head "Business" in respect of the profits or gains of any business carried on by him.

(2) Such profits or gains shall be computed after making the following allowances, namely:—

- (i) any rent paid for the premises in which such business is carried on, provided that, when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the *Income-tax Officer* may determine having regard to the proportional part so used;
- (ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by the assessee as a dwelling-house, a proportional part only of such amount shall be allowed;
- (iii) in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid;
- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, the amount of any premium paid;
- (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof;
- (vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed;

Provided that—

- (a) the prescribed particulars have been duly furnished;
- (b) where full effect cannot be given to any such allowance in any year owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that allowance, or, if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and
- (c) the aggregate of all such allowances made under this Act or any Act repealed hereby, or under the *Indian Income-tax Act, 1886*, shall, in no case, exceed the original cost to the assessee of the buildings, machinery, plant, or furniture, as the case may be;

(vii) in respect of any machinery or plant which, in consequence of its having become obsolete, has been sold or discarded, the difference between the original cost to the assessee of the machinery or plant as reduced by the aggregate of the allowances made in respect of depreciation under clause (vi), or any Act repealed hereby, or the *Indian Income-tax Act, 1886*, and the amount II of 1886. for which the machinery or plant is actually sold, or its scrap value;

(viii) any sums paid on account of land-revenue, local rates or municipal taxes in respect of such part of the premises as is used for the purposes of the business;

(ix) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such profits or gains.

(3) In sub-section (2) the word "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section.

11. (1) The tax shall be payable by an assessee under the head "Professional earnings." "Professional earnings" in respect of the profits or gains of any profession, or vocation, followed by him.

(2) Such profits or gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession or vocation, provided that no allowance shall be made on account of any personal expenses of the assessee.

(3) Professional fees paid in any part of India to a person ordinarily resident in British India shall be deemed to be profits or gains chargeable under this head.

12. (1) The tax shall be payable by an assessee under the head "Other sources." "Other sources" in respect of income, profits and gains of every kind and from every source to which this Act applies (if not included under any of the preceding heads).

(2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of any personal expenses of the assessee.

13. Income, profits and gains shall be computed for the purposes of sections 10, 11 and 12, in accordance with the method of accounting regularly employed by the assessee:

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the *Income-tax Officer*, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the *Income-tax Officer* may determine.

14. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family.



(2) *The tax shall not be payable by an assessee in respect of—*

(a) any sum which he receives by way of dividend as a shareholder in a company where the profits or gains of the company have been assessed to income-tax; or

(b) such an amount of the profits or gains of any firm which have been assessed to income-tax as is proportionate to his share in the firm.

15. (1) The tax shall not be payable by an assessee in respect of any case of life insurance. sum paid by him to effect an insurance on his own life or on the life of his wife, or in respect of a contract for a deferred annuity on his own life or on the life of his wife, or as a contribution to any Provident Fund to which the Provident Funds Act, 1897, applies, or to any Provident Fund which complies with the provisions of the Provident Insurance Societies Act, 1912, or has been exempted from the provisions of that Act.

(2) *Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any adult male member of the family or of the wife of any such member*

(3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the proviso to sub-section (1) of section 7, exceed one-sixth of the total income of the assessee.

16. (1) In computing the total income of an assessee sums exempted under the proviso to sub-section (1) of section 7, the provisos to section 8, sub-section (2) of section 14 and section 15, shall be included.

(2) For the purposes of sub-section (1), any sum mentioned in clause (a) of sub-section (2) of section 14 shall be increased by the amount of income-tax payable by the company in respect of the dividend received.

17. Where owing to the fact that the total income of any assessee has reached or exceeded a certain limit, he is liable to pay income-tax or to pay income-tax at a higher rate, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely:—

- (a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and
- (b) the amount by which his total income exceeds that sum.

#### CHAPTER IV.

##### DEDUCTIONS AND ASSESSMENT.

18. (1) Income-tax shall, unless otherwise prescribed in the case of any security of the Government of India, be leviable in advance by deduction at the time of payment in respect of income chargeable under the following heads:—

- (i) "Salaries"; and
- (ii) "Interest on securities."

(2) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head:

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this sub-section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

(3) The person responsible for paying any income chargeable under the head "Interest on securities" shall, at the time of payment, deduct income-tax on the amount of the interest payable at the maximum rate.

(4) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.

(5) Any deduction made in accordance with the provisions of this section shall be treated as a payment of income-tax on behalf of the person from whose income the deduction was made, or of the owner of the security, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund.

(6) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government of India, or as the Board of Inland Revenue directs.

(7) If any such person does not deduct and pay the tax as required by this section, he shall, without prejudice to any other consequences which he may incur, be deemed to be personally in default in respect of the tax.

(8) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(9) Every person deducting income-tax in accordance with the provisions of sub-section (3) shall, at the time of payment of interest, furnish to the person to whom the interest is paid a certificate to the effect that income-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

19. In the case of income chargeable under any other head than those mentioned in sub-section (1) of section 18, and in any case where income-tax has not been deducted in accordance with the provisions of that section, the tax shall be payable by the assessee direct.

20. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

IX of 1897.

V of 1912.

**21.** The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and, within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form, a return in writing showing—

- (a) the name and, so far as it is known, the address, of every person who was receiving on the said 31st day, of March, or has received during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;
- (b) the amount of the income so received by each such person, and the time or times at which the same was paid;
- (c) the amount deducted in respect of income-tax from the income of each such person.

**22.** (1) The principal officer of every company shall prepare, and, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer a return, in the prescribed form and verified in the prescribed manner, of the total income of the company during the previous year:

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return in the case of any company or class of companies.

(2) In the case of any person other than a company whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year.

(3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made, and any return so made shall be deemed to be a return made in due time under this section.

(4) The Income-tax Officer may serve on the principal officer of any company or on any person upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce or cause to be produced such accounts or documents as the Income-tax Officer may require:

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

**23.** (1) If the Income-tax Officer is satisfied that a return made under section 22 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return.

(2) If the Income-tax Officer has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.

(4) If the principal officer of any company or any other person fails to make a return under sub-section (1) or sub-section (2) of section 22, as the case may be, or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment.

**24.** (1) Where any assessee sustains a loss in any year under any of the heads mentioned in section 6, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year.

(2) Where the assessee is a registered firm and the loss sustained cannot wholly be set off under sub-section (1), any member of such firm shall be entitled to have set off against his own personal income, profits or gains, if any, in the year in which the loss was sustained, such amount of the loss not already set off as is proportionate to his share in the firm.

**25.** (1) Where any business, profession or vocation commenced after the 31st day of March, 1922, is discontinued in any year, an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year.

(2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.

VII of 1918.

(3) Where any business, profession or vocation which was in existence at the commencement of this Act, and on which tax was at any time charged under the provisions of the Indian Income-tax Act, 1918, is discontinued, no tax shall be payable in respect of the income, profits and gains of the period between the end of the previous year and the date of such discontinuance, and the assessee may further claim that the income, profits and gains of the previous year shall be deemed to have been the income, profits and gains of the said period. Where any such claim is made, an assessment shall be made on the basis of the income, profits and gains of the said period, and if an amount of tax has already been paid in respect of the income, profits and gains of the previous year exceeding the amount payable on the basis of such assessment, a refund shall be given of the difference.

(4) Where an assessment is to be made under sub-section (1) or sub-section (3), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, on any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

**26.** Where any change occurs in the constitution of a firm or where any person has succeeded to any business, profession or vocation, the assessment shall be made on the firm as constituted, or on the person engaged in the business, profession or vocation, as the case may be, at the time of the making of the assessment.

**27.** Where an assessee or, in the case of a company, the principal officer thereof, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 22, or that he did not receive the notice issued under sub-section (4) of section 22 or sub-section (2) of section 23, or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 23.

**28.** (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income, or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income :

Provided that no such order shall be made, unless the assessee has been heard, or has been given a reasonable opportunity of being heard :

Provided, further, that no prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

(2) An Assistant Commissioner or a Commissioner who has made an order under sub-section (1) shall forthwith send a copy of the same to the Income-tax Officer.

**29.** When the Income-tax Officer has determined a sum to be payable by an assessee under section 23, or when an order has been passed under section 28 for the payment of a penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

**30.** (1) Any assessee objecting to the amount assessed under this Act, or section 27, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to make a fresh assessment under section 27 or to any order against him under sub-section (2) of section 25 or section 28 made by an Income-tax Officer, may appeal to the Assistant Commissioner against the assessment or against such refusal or order :

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 23, or under that sub-section read with section 27.

(2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the date of the refusal to make a fresh assessment under section 27, as the case may be; but the Assistant Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

**31.** (1) The Assistant Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing.

(2) The Assistant Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.

(3) In disposing of an appeal the Assistant Commissioner may, in the case of an order of assessment,—

(a) confirm, reduce, enhance or annul the assessment, or

(b) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Assistant Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment,

or, in the case of an order under sub-section (2) of section 25 or section 28,

(c) confirm, cancel or vary such order :

*Provided that the Assistant Commissioner shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.*

**32.** (1) Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31 may appeal to the Commissioner within thirty days of the making of such order.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may pass such orders thereon as he thinks fit.

**33.** (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any authority subordinate to him or by himself when exercising the powers of an Assistant Commissioner under sub-section (4) of section 5.

(2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon, as he thinks fit :

*Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard.*

**34.** If for any reason income, profits or gains chargeable to income-tax has escaped assessment in any year, or has been assessed at too low a rate, the Income-tax Officer may, at any time within one year of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 22, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section :

*Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be.*

**35.** (1) The Income-tax Officer may, at any time within one year from the date of any demand made upon an assessee, on his own motion rectify any mistake apparent from the record of the assessment, and shall within the like period rectify any such mistake which has been brought to his notice by such assessee :

*Provided that no such rectification shall be made, having the effect of enhancing an assessment unless the Income-tax Officer has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard.*

(2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.

**36.** In the determination of the amount of tax to be calculated or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

**37.** The Income-tax Officer, Assistant Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in V of 1909, respect of the following matters, namely : —

(a) enforcing the attendance of any person and examining him on oath or affirmation ;

(b) compelling the production of documents ; and

(c) issuing commissions for the examination of witnesses ;

and any proceeding before an Income-tax Officer, Assistant Commissioner or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 193 and 228 of the Indian Penal Code.

**38.** The Income-tax Officer or Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm, or of the manager or adult male members of the family, as the case may be, and of their addresses ;

(2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses.

**39.** The Income-tax Officer or Assistant Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

## CHAPTER V.

### LIABILITY IN SPECIAL CASES.

**40.** In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons

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are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains and all the provisions of this Act shall apply accordingly.

**41.** In the case of income, profits or gains chargeable under this Act which are received by the Courts of Wards, etc. the Administrators-General, the Official Trustees or by any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator-General, Official Trustee, receiver or manager in the like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly.

**42.** (1) In the case of any person residing out of British India, all profits or gains accruing or arising to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

Provided that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India.

(2) Where a person not resident in British India, and not being a British subject or a firm or company constituted within His Majesty's dominions or a branch thereof, carries on business with a person resident in British India, and it appears to the Income-tax Officer or the Assistant Commissioner, as the case may be, that owing to the close connection between the resident and the non-resident person and to the substantial control exercised by the non-resident over the resident, the course of business between those persons is so arranged, that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

**43.** Any person employed by or on behalf of a person residing out of British India, or having any business connection with such

person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent:

Provided that no person shall be deemed to be the agent of a non-resident person, unless he has had an opportunity of being heard by the Income-tax Officer as to his liability.

**44.** Where any business, profession or vocation carried on by a firm or has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income, profits and gains of the firm.

## CHAPTER VI.

### RECOVERY OF TAX AND PENALTIES.

**45.** The amount of income-tax specified as payable in a notice of demand under section 29 or an order under section 31 or section 33, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

**46.** (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.

(2) The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land-revenue.

(3) In any area, with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income-tax Officer may proceed to recover the amount due by such process.

(4) The Commissioner may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section (3).

(6) If any assessee is in receipt of any income chargeable under the head "Salaries," the *Income-tax Officer* may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sums so deducted to the credit of the Government of India, or as the *Board of Inland Revenue* directs.

(6) The Local Government may direct, with respect to any specified area, that income-tax shall be recovered therein, with, and as an addition to, any municipal tax or local rate by the same person and in the same manner as the municipal tax or local rate is recovered.

(7) Save in accordance with the provisions of sub-section (1) of section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act.

47. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 25, section 28 or sub-section (1) of section 46, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax.

## CHAPTER VII.

### REFUNDS.

48. (1) If a shareholder in a company who has received any dividend therefrom satisfies the *Income-tax Officer* that the rate of income-tax applicable to the profits or gains of the company at the time of the declaration of such dividend is greater than the rate applicable to his total income of the year in which such dividend was declared, he shall, on production of the certificate received by him under the provisions of section 20, be entitled to a refund on the amount of such dividend (including the amount of the tax thereon) calculated at the difference between those rates.

(2) If a member of a registered firm satisfies the *Income-tax Officer* that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been levied on the profits or gains of the firm of that year, he shall be entitled to a refund on his share of those profits or gains calculated at the difference between those rates.

(3) If the owner of a security from the interest on which, or any person from whose salary, income-tax has been deducted in accordance with the provisions of section 18 satisfies the *Income-tax Officer* that the rate of income-tax applicable to his total income of the previous year was less than the rate at which income-tax has been charged in making such deduction in that year, he shall be entitled to a refund on the amount of interest or salary from which such deduction has been made calculated at the difference between those rates.

49. (1) If any person who has paid Indian income-tax for any year on any part of his income proves to the satisfaction of the *Income-tax Officer* that he has paid United Kingdom

income-tax for that year in respect of the same part of his income, and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920, is less than the Indian rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Indian rate of tax and the rate at which he was entitled to and obtained relief under that section:

Provided that the rate at which the refund is to be given shall not exceed one-half of the Indian rate of tax.

(2) In sub-section (1)—

(a) the expression "Indian income-tax" means income-tax and super-tax charged in accordance with the provisions of this Act;

(b) the expression "Indian rate of tax" means the amount of the Indian income-tax divided by the income on which it was charged;

(c) the expression "United Kingdom income-tax" means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts.

50. No claim to any refund of income-tax under this Chapter shall be allowed, unless it is made within one year from the last day of the year in which the tax was recovered.

## CHAPTER VIII.

### OFFENCES AND PENALTIES.

51. If a person fails without reasonable cause

Failure to make payments or deliver returns or statements or allow inspection. or excuse—

(a) to deduct and pay any tax as required by section 18 or under sub-section (5) of section 46;

(b) to furnish a certificate required by sub-section (9) of section 18 or by section 20 to be furnished;

(c) to furnish in due time any of the returns mentioned in section 21, section 22, or section 38;

(d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 23, such accounts and documents as are referred to in the notice;

(e) to grant inspection or allow copies to be taken in accordance with the provisions of section 39,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

52. If a person makes a statement in a False statement in verification mentioned in declaration. section 22, or sub-section (3) of section 30, or sub-section (2) of section 32 which is false, and which he either knows or

believes to be false, or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

**53. (1)** A person shall not be proceeded against for an offence under section 51 or section 52 except at the instance of the Assistant Commissioner.

(2) The Assistant Commissioner may stay any such proceeding or compound any such offence.

**54. (1)** All particulars contained in any statement made, return furnished by a public servant or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine:

Provided that nothing in this section shall apply to the disclosure—

- (a) of any such particulars for the purposes of a prosecution under section 193 of the Indian Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or
- (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or
- (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand or
- (d) of such facts, to an authorised officer of the United Kingdom, as may be necessary to enable relief to be given under section 27 of the Finance Act, 1920, or a refund to be given under section 49 of this Act:

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

#### CHAPTER IX.

##### SUPER-TAX.

**55.** In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the

previous year of any individual, unregistered firm, Hindu undivided family or company, an additional duty of income-tax (in this Act referred to as super-tax) at the rate or rates laid down for that year by Act of the Indian Legislature.

**56.** Subject to the provisions of this Chapter, the total income of any individual, unregistered firm, Hindu undivided family or company shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

**57. (1)** In the case of any assessee residing out of British India who is a member of a registered firm, and whose share of the profits from such firm is liable to super-tax, the remaining members of such firm who are resident in British India shall be jointly and severally liable to pay the super-tax due from the non-resident member in respect of such share.

(2) Where any assessee who is liable to pay super-tax on the amount of the dividends receivable by him from any company is, to the knowledge of the principal officer of the company, residing out of British India, the principal officer shall be liable to pay the super-tax due by such non-resident person in respect of the dividends received by him from the company, and shall have power to deduct the amount of such super-tax from the amount payable by the company to such assessee.

(3) Where any person pays any tax under the provisions of this section on account of an assessee who is residing out of British India, credit shall be given therefor in determining the amount of the tax to be payable by any agent of such non-resident assessee under the provisions of sections 42 and 48.

**58. (1)** All the provisions of this Act, except section 8, the proviso to sub-section (1) of section 7, the provisos to section 8, sub-section (2) of section 14, and sections 15, 17, 18, 19, 20, 21 and 48 shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

(2) Save as provided in section 57, super-tax shall be payable by the assessee direct.

#### CHAPTER X.

##### MISCELLANEOUS.

**59. (1)** The Board of Inland Revenue may, subject to the control of the Governor General in Council, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of British India or for such part thereof as may be specified.

(2) Without prejudice to the generality of the foregoing power, such rules may—

- (a) prescribe the manner in which, and the procedure by which, the income,

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profits and gains shall be arrived at in the case of—

(i) *incomes derived in part from agriculture and in part from business;*

(ii) insurance companies;

(iii) persons residing out of British India;

(b) prescribe the procedure to be followed on applications for refunds;

(c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, or under section 49 of this Act;

(d) prescribe the year which for the purpose of relief under section 49 is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920; and

(e) provide for any matter which by this Act is to be prescribed.

(3) *The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.*

(4) Rules made under this section shall be published in the Gazette of India, and shall thereupon have effect as if enacted in this Act.

60. The Governor General in Council may, by notification in the Gazette of India, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.

61. Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceedings under this Act, may attend either in person or by any person authorised by him in writing in this behalf.

62. *A receipt shall be given for any money paid or recovered under this Act.*

63. (1) A notice or requisition under this Act may be served on the person therein-named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) *Any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or on the manager, or any adult male member of the family.*

64. (1) Where an assessee carries on business at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate, or, where the business is carried on in more places than one, by the Income-tax Officer of the area in which his principal place of business is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner, or, where the question is between places in more provinces than one, by the Commissioners concerned, or, if they are not in agreement, by the Board of Inland Revenue:

*Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views.*

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

65. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

66. (1) If, in the course of any assessment under this Act or any proceeding Commissioner to High in connection therewith other than a proceeding under Chapter VIII, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

(2) Within one month of the passing of an order under section 81, the assessee in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees, require the Commissioner to refer to the High Court any question of law arising out of such order, and the Commissioner shall, within one month of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court:

*Provided that, if, in exercise of his power of review under section 33, the Commissioner decides the question, the assessee may withdraw his application, and if he does so, the fee paid shall be refunded.*

(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it, and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

(4) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is

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founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(6) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case :

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done or intended to be done under this Act.

68. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof :

Provided that such repeal shall not affect the liability of any person to pay any sum due from him or any existing right of refund under any of the said enactments :

Provided, further, that the provisions of section 19 of the Indian Income-tax Act, 1918, shall apply, so far as may be, to all assessments made under that Act in the year ending on the thirty-first day of March, 1922, and where an adjustment shall be made under the provisions of section

19 of the said Act, the provisions of this Act regarding the procedure for the assessment and recovery of income-tax shall apply as if such adjustment were an assessment made under this Act.

### THE SCHEDULE.

#### ENACTMENTS REPEALED.

(See section 68.)

1	2	3	4
Year.	No.	Short title.	Extent of repeal.
1918.	VII	The Indian Income-tax Act, 1918.	The whole.
1919.	IV	The Indian Income-tax (Amendment) Act, 1919.	The whole.
"	XVIII	The Repealing and Amending Act, 1919.	So much of the First Schedule as relates to the Indian Income-tax Act, 1918.
1920.	XVII	The Indian Income-tax (Amendment) Act, 1920.	The whole.
"	XIX	The Super-tax Act, 1920.	The whole.
"	XXXI	The Repealing and Amending Act, 1920.	So much of the First Schedule as relates to the Super-tax Act, 1920.
"	XLIV	The Indian Income-tax (Amendment No. 2) Act, 1920.	The whole.

H. MONCRIEFF SMITH,  
Secretary to the Government of India.

